Supreme Court, U.S.
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No.

In The
Supreme Court of the United States
October Term, 1998

AT&T CORPORATION,
Petitioner,

v.

ROBERTA E. ANDERSON, ET AL., and
COMMUNICATIONS WORKERS OF AMERICA,
Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI
with Appendix

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QUESTIONS PRESENTED FOR REVIEW

1. Does Section 9(a), 29 U.S.C. Sec. 159(a), of the Labor Management Relations Act, preclude a union (CWA) and company (AT&T) from negotiating a provision in a collective-bargaining agreement that would continue to apply to employees who transfer out of the bargaining unit and into a different bargaining unit where the employees are represented by a different union (IBEW) whose contract does not contain such a provision?

2. In order for an individual to maintain an action under Section 301, 29 U.S.C. Sec. 185, of the Labor Management Relations Act, must they first attempt to exhaust the grievance and arbitration provisions of the collective-bargaining agreement they seek to enforce and plead and prove that the union has breached its duty to fairly represent them whether they have elected to sue the union or not, and what is the applicable statute of limitations to apply in such case?

3. Does an employee seeking to recover wages under a collective-bargaining agreement have standing under Section 301?

PARTIES TO THE PROCEEDING

The petitioner is AT&T Corp.

The respondent, is Roberta E. Anderson, *et al.*

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1998

AT&T CORP.,

Petitioner,

v.

ROBERTA E. ANDERSON, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI

AT&T Corp. petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The judgment of the Court of Appeals (App. A1) is reported at 147 F. 3d 467. The Order of the Court of Appeals denying Petitioner petition for a rehearing *en banc* is at App. B1. The Opinion and Order of the United States District Court for the Southern District of Ohio, Eastern Division is at App. C1-D1.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on June 2, 1998, and its Order denying petition for rehearing

en banc was entered July 10, 1998. The jurisdiction of the Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Labor Management Relations Act; 61 Stat. 156, 29 U.S.C. Sec. 185(a); "Section 301(a)" (App. P1); 65 Stat. 601, 29 U.S.C. Sec. 159(a); "Section 9(a)" (App. Q1); National Labor Relations Act, 29 U.S.C. Section 160(b); "Section 10(b)" (App. R1)

STATEMENT OF THE CASE

A. The Instant Case: Factual Background

In 1986 plaintiffs-employees of Petitioner, "AT&T", were members of and exclusively represented by the Communication Workers of America, "CWA". Prior to 1986, employees represented by the CWA received wage incentives in addition to their wages. As part of the 1986 contract, referred to as MFG-3, wage incentives were negotiated out of the contract and replaced, in part, with wage-

supplements known as SSWT's.[1] (App. F1; unless otherwise noted references to the facts are to the amended complaint appearing at App. F1). Under the 1986 contract SSWT's were paid per hour worked to those employees covered by the CWA's contract with AT&T who were on roll as of a specific date and who held a job title of PRODUCTION OCCUPATION LEVEL.

In 1989, the CWA and AT&T negotiated a new three-year contract, MFG-4, that continued these payments. Shortly thereafter there arose a dispute between the CWA and AT&T as to whether these payments would follow an employee once he/she left a particular manufacturing location and transferred to a different manufacturing location covered by MFG-3 or 4. Pursuant to the binding grievance and arbitration provisions of the CWA/AT&T contract, this dispute was submitted to arbitration three times, because of different issues not relevant

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[1]As part of the buyout of wage incentives, the parties also negotiated for pension adders. Since, for purposes of this Petition, there is no difference between the two, only SSWT's will be referred to.

here.[2] The CWA prevailed in each arbitration. Thus, by the use of the grievance and arbitration provisions of the CWA/AT&T contract, the contract was construed to mean that these payments were portable as long as the employee transferred to another CWA location covered by the applicable CWA contract. At no time did the CWA assert, although some plaintiffs had transferred out of the jurisdiction of the CWA's contract to locations represented by the IBEW, that these payments would also transfer with the employee when he/she left the bargaining unit. Indeed, Ron Allen, the CWA's spokesperson during the 1986 negotiations had informed plaintiffs that the language of the contract never meant that these payments would transfer with the employee when he/she left the CWA bargaining unit. (App. K1)

Between 1988 and 1991 plaintiffs transferred from various CWA locations covered by the MFG-3 and 4 agreements to the Columbus, Ohio factory, which is

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[2]The grievance and arbitration provisions of the CWA/AT&T contract are at App. H1.

represented by the IBEW, Local 2020. The IBEW contract contains no provision for these payments, and as Mr. Allen explained to plaintiffs, the IBEW never wanted these payments as part of its contract with AT&T. (App. K1) Plaintiffs, under the IBEW contract held the same job title. Upon transfer, AT&T stopped paying plaintiffs the supplement payments.

Prior to plaintiffs instituting the instant lawsuit, counsel for plaintiffs wrote to both the CWA and IBEW asserting that each union had failed in its duty to fairly represent them. Plaintiffs were once again informed by the unions that they were not entitled to continue to receive these payments once they transferred out of the CWA's jurisdiction, and it was never the intent of either the CWA or AT&T that these payments would transfer once they left the bargaining unit. (App. M1; N1 and 01)

In September 1994, plaintiffs instituted the instant case asserting jurisdiction under Sec.301, but they did not sue either union. AT&T filed a motion to dismiss for failure to join indispensable

parties, to wit the unions. The Court issued an order compelling plaintiffs to join the unions. (App. F1

AT&T filed a motion for summary judgment, and plaintiffs filed a cross motion for partial summary judgment. On March 27, 1995 the District Court granted AT&T's motion and denied plaintiffs' cross motion. (App. C1) Plaintiffs filed an appeal, and the Sixth Circuit reversed the District Court, issuing an order granting plaintiffs' partial summary judgment.

B. The Sixth Circuit's Opinion

The Sixth Circuit found that plaintiffs-employees had standing to maintain this action solely against AT&T because they are third-party beneficiaries to the CWA's contract and they had no fair representation claim against the CWA or the IBEW, as neither had the authority to assert claims on their behalf under the MFG-3 agreement. (App. A1)

The Sixth Circuit reasoned that plaintiffs-employees were not subject to the six month statute of limitations as

applied in DelCostello v International Brotherhood of Teamsters, 462 U.S. 151 (1983) because DelCostello only applies to a hybrid action where plaintiffs sue both the employer and the union, citing Apponi v. Sunshine Biscuits, Inc., 809 F. 2d 1210, 1216 (6th Cir. 1987), a suit by retirees. While the Sixth Circuit noted AT&T argued that plaintiffs had failed to exhaust the grievance and arbitration provisions of the contract they sought to enforce, (App. A1), it did not address this issue in its Opinion.

The Sixth Circuit rejected the District Court's holding that, as a matter of federal labor law, Sec. 9(a), the parties to a collective-bargaining agreement may not confer benefits on employees that follow the employee when they transfer to another bargaining unit represented by a different union and covered by a different contract that does not contain those benefits. The Court reasoned that, as a matter of federal labor law, there is no distinction between a benefit conferred on a retired employee, citing International Union, UAW v. Yard-Man, Inc., 716 F. 2d 1476 (6th

Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), than a benefit conferred on an active employee who transfers from one bargaining unit to another. (App. A1)[3]

SUMMARY OF ARGUMENT

The Sixth Circuit's decision is in conflict with the Fifth Circuit's decision in General Warehouse and Helpers Local 767 v. Standard Brands, Inc., 579 F. 2d 1282, 1293 (1978) on whether a contract benefit may transfer with an employee to another bargaining unit. Its decision is also in conflict with the Ninth Circuit's holding in United Food & Commercial Workers Union, Local 197 v. Alpha Beta Co., 736 F. 2d 1371 (1984) which compelled the employer to arbitrate a dispute as to whether the employer must continue to make benefit payments even though the individual had left the bargaining unit. The Sixth Circuit's

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[3]The Sixth Circuit addressed, but did not decide, whether plaintiffs could prevail under a theory of estoppel. Since this portion of the Court's decision is *dicta*, it need not be addressed in this Petition, but the Court may want to adddress this matter if the Petition is granted.

decision also raises important questions about the application of the Court's decisions in Nolde Brothers, Inc. v. Bakery Workers, 430 U.S. 243 (1977) and DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), in actions brought by individuals pursuant to Sec. 301.

ARGUMENT

A. Does Section 9(a), 29 U.S.C. Sec. 159(a), of the Labor Management Relations Act, preclude a union (CWA) and company (AT&T) from negotiating a provision in a collective-bargaining agreement that would continue to apply to employees who transfer out of the bargaining unit and into a different bargaining unit where the employees are represented by a different union (IBEW) whose contract does not contain such a provision?

The Sixth Circuit held that "we can ascertain no principled distinction between a case where an employee retires and then personally files a lawsuit claiming lifetime retirement benefits and

a case where an employee transfers to a location with different union representation and then files a lawsuit claiming wage-supplement benefits to which he is entitled for the duration of his company employment." (App. A1)[4] To which must be added "and is based on the terms of a collective bargaining agreement covering a bargaining unit he is longer a member of". In short, the Sixth Circuit found that the CWA and AT&T could enter into an agreement that employees would continue to receive wage-supplements even though they transferred to a different location covered by a different contract, which contains no such payments, and are represented by a different union. This holding is in direct conflict with the Fifth Circuit's holding in General Warehouseman and Helpers Local 767 v. Standard Brands, Inc., 579 F. 2d 1282, 1293 (1978) *reh. en banc denied*, (1978), which stated that

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[4]The irony of this conclusion is that the case the Court relied upon, International Union, UAW v. Yard-Man, Inc., 716 F. 2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) was brought by the union where the union had waived its claim that the dispute was subject to arbitration.

"We think that a contract specifying that an employee transferring to another plant operated by the same employer would continue to receive the same wages and benefits that he received at the old plant despite the existence of a contract with another union at the new location, would be unenforceable."

Section 9(a), 29 U.S.C. Sec. 159(a), states that representatives selected by the employees in a unit appropriate for bargaining is the "exclusive representative" for purposes of bargaining. (App. P1) As the lower court, and the District Court in Florida that decided the same isue, noted, the benefits plaintiffs were entitled to under the CWA's contract ceased once they left that bargaining unit and transferred to a different bargaining unit and became exclusively represented by a different union. (App. C1; L1) "Indeed, the Communications Workers could not bind AT&T with respect to employees who leave its collective bar-gaining unit and become part of another unit," citing Local 7-210 Oil, Chemical Workers v. Union Tank Car Co., 475 F. 2d 194, 197 (7th Cir.) cert.

denied, 414 U.S. 875 (1973).[5] See Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987) where the court suggested that a defense to an individual's claim of having an individual employment contract regardless of the existence of a union may be that such a claim is preempted by the provisions of Section 9(a).

While the Sixth Circuit can ascertain no principled reason to distinguish rights that flow to retirees and those claimed by plaintiffs, under the facts of this case, the statutes and case law do. A retiree is not an employee under the statute, and there is no duty owed a retiree by the union nor are retiree benefits mandatory subjects of bargaining. Allied Chemical & Alkali

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[5]As noted, the Sixth Circuit did not decide this case on the basis of estoppel; thus, it need not be made a part of this Petition. Since, however, the Court did spend time discussing this issue, it need be noted that the CWA has made it clear that it never negotiated contract language that would support plaintiffs' claims. (App. K1; O1) Where, as here, the parties who negotiated the language plaintiffs rely upon have denied that such interpretation was placed on this language, clearly the Court may not do so.

Workers of America, Local No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).

Referring to the wage-supplements as evergreen or status rights has no legal significance to this case. We are not dealing with rights that may extend beyond the life of the contract, e.g. the right to arbitrate after the expiration of the contract. Nor are we dealing with a vested right as that term has been used in labor law; those rights one obtains over time such as severance pay and vacation time. All other rights are creations of the collective-bargaining agreement, Nolde Bros.Inc. v. Local No. 358 Bakery Workers, 430 U.S. 243 (1972). The issue here is a wage-supplement tied to an active employee working, which is uniquely a creation of the contract. Under the Sixth Circuit's decision, the contractually created wage-supplements cannot be changed by the collective-bargaining process by either union, since neither union has the authority to bargain over these wage-supplements. Such a holding creates an anomaly for purposes

of Section 9(a) and risks the development of conflicting principles.

B. In order for an individual to maintain an action under Section 301, 29 U.S.C. Sec. 185 of the Labor Management Relations Act, must they first attempt to exhaust the grievance and arbitration provisions of the collective-bargaining agreement they seek to enforce and plead and prove that the union has breached its duty to fairly represent them whether they have elected to sue the union or not, and what is the applicable statute of limitations to apply in such case?

Where, as here, the collective-bargaining agreement contains a mandatory, binding grievance and arbitration provision (App. H1), long-settled Section 301 principles mandate that plaintiffs-employees attempt to exhaust those procedures. Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-653 (1965). The reason for this requirement is that, ". . .the employee must afford the union

the opportunity to act on his behalf.... If a grievance procedure cannot be made exclusive, it loses much of its desirabiity as a method of settlement. A rule creating such a situation 'would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements'" (citation omitted). Resort to the mutually agreed upon method of resolving disputes is favored national labor policy and lies at the heart of industrial self-government. All doubts as to whether a dispute is subject to the grievance and arbitration provisions should be resolved in favor of coverage. United Steelworkers v.American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-583 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 590 (1960); 29 U.S.C., Sec. 159(a); Section 9(a).

The only exceptions to these principles are if the employer and/or union have repudiated the collective-bargaining agreement's grievance procedure, thus making resort to such procedures futile or the union has

breached its duty of fair representation. Vaca v. Sipes, 386 U.S. 171 (1967); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976). The union's duty of fair representation stems from Section 9(a) of the NLRA. Vaca v. Sipes, *supra* at 177.

Based on these principles, AT&T argued that plaintiffs-employees may not maintain this action because they did not plead or prove that either AT&T or the CWA/IBEW had repudiated the grievance and arbitration provisions or that the unions had failed in their duty of fair representation.[6]

While the Sixth Circuit acknowledged AT&T argued, "that plaintiffs had failed to exhaust their administrative remedies." (App. A1), its opinion does not address this issue. This failure

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[6]Paragraph 43 of amended complaint, merely asserts that the CWA cannot lawfully process grievances for plaintiffs, and the IBEW refused to incorporate the payments into its collective bargaining agreement. Plaintiffs admit that neither the CWA or IBEW has failed in its duty to fairly represent them. (App. F1; Response to Request to Admit; AT&T's Affirmative Defenses to plaintiff's Amended Complaint. (App. I1, G1)

appears to stem from its incorrect application of the above principles and the application DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) to actions brought by employees under Section 301 and the rationale of Nolde Brothers, *supra*.

In DelCostello the Court was faced with the question as to which statutes of limitations should apply in a Section 301 action where an individual seeks to sue the employer for breach of contract and the union for breach of its duty of fair representation. The Court held that Section 10(b), of the National Labor Relations Act, 29 U.S.C. Section 150(b), the six month statute of limitations should apply. *Id.*, at 163; App. R1). The Court made it clear why the six month statute of limitations should apply to these "hybrid" claims.

> . . .an individual employee may bring suit against his employer for breach of a collective-bargaining agreement. Smith v, Evening News Ass'n., 371 U.S. 195 (1962). Ordinarily, however, an employee is required to attempt to exhaust any

grievance or arbitration remedies... (citations omitted). . .In Vaca and Hines, however, we recognized that the rule works an unacceptable injustice when the union representing the employee in the grievance/arbitration procedure acts in such a discriminatory, dishonest, arbitrary, or perfunctory fashion as to breach its duty of fair representation. In such an instance, an employee may bring suit against both the employer and the union, not withstanding the outcome or finality of the grievance or arbitration proceeding. . .(citations omitted). Such a suit, as a formal matter, comprises two courses of action. The suit against the employer rests on Sec. 301, since the employee is alleging a breach of the collective-bargaining agreement. The suit against the union is one for breach of contract of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. 'Yet the two claims are inextricably

interdependent. To prevail against either the Company or the Union, . . .[employees-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.'" (citations omitted) The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both." (at 462 U.S. at 163-165; emphasis added)

Thus, the lynchpin as to what the employees-plaintiffs must plead and prove and the applicable statute of limitations is the existence or non existence of a grievance and arbitration provision. While they may elect not to proceed under a hybrid type action, they must nonetheless prove that the employer breached the contract, and the Union has failed in its duty of fair representation.[7] Reed v.

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[7]While plaintiffs elected to proceed, initially, only against AT&T, they were required to join the unions as indispens-

United Transportation Union, 488 U.S. 319, 329 (1989).

See Thomas v. LTV Corp., 39 F.3d 611, 621-622 (5th Cir. 1994), applying six month statute of limitations even though plaintiff did not sue the union where the action was based on the collective-bargaining agreement that contained a grievance and arbitration provision. See also Hechler v. International Brotherhood of Electrical Workers, AFL-CIO, 834 F. 2d 942, 947-48 (11th Cir. 1987) on a remand, 481 U.S. 851 (1987) pointing out the significance of the absence of the grievance and arbitration provisions to a determination of the applicable statute of limitations. Filippo v. Northern Indiana Public Service Corp., 141 F. 3d 744, 748-9 (7th Cir. 1998).

Contrary to these principles and case law, the Sixth Circuit held that, "plaintiffs have no fair representation claim against either the CWA or the IBEW because neither union has the authority

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able parties. (App. F1) Thus, the case, as it stood before the Sixth Circuit, was a hybrid case on the pleadings.

to assert claims on their behalf. . ." and they, "qualify as third-party beneficiaries" thus they have a right to proceed against the employer. (App. A1) The Sixth Circuit then found, based on these erroneous conclusions, that the six-month statute of limitations does not apply because "The Court's rationale was that. . .because the plaintiff's claim in DelCostello involved both the employer's breach of a collective bargaining agreement. . .and the Union's breach of its duty of fair representation . . .it was appropriate to apply the longer limitations period." (App. A1)

In Nolde Brothers, *supra*, the Court held there is a presumption a dispute arose under an expired contract, which is not the case here. Thus the dispute is subject to arbitration, "where it involves facts and occurrences that arose before expiration, where an action taken after expiration infringes a right that accrued or vested under the argument . . . " Litton Financial Division v. National Labor Relations Board, 501 U.S. 190, 205 (1991). (See United Food & Commercial Workers Union, Local 197 v.

Alph Beta Co., 726 F. 2d 1371 (1984), compelling arbitration of this type of claim. Thus the issue is whether the contract contains a grievance and arbitration provision that is final and binding. If it does, then plaintiffs-employees must exhaust that procedure before seeking relief under Section 301. If they elect to proceed only against the employer, they must nonetheless prove that the union failed in its duty to fairly represent them, DelCostello, *supra*. In any case, they must institute their action within six months of the alleged breach.

C. Does an employee seeking to recover wages under a collective bargaining agreement have standing under Section 301?

In Association of Westinghouse Salaried Employees v. Westinghouse Electrical Corp., 348 U.S. 437 (1955), it was held that the Union could not, under Section 301, maintain an action on behalf of its members for wage payments because wage payments were unequally personal

rights to the individual and, therefore, had to be brought by the individual in state court. In 1962, in Smith v. Evening News Ass'n., 371 U.S. 195, 199 the Westinghouse Rule was overruled because claims such as ". . .rates of pay... are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery are to a large degree inevitably interwined with union interests and many times predicate grave questions concerning the interpretation and enforceability of the collective-bargaining contracts on which they are based. . ." The Court, however, did not address whether an individual had standing to maintain such an action. Id 371 U.S. 199, n. 9.[8] Whether an individual employee has standing under Section 301 ". . .requires a focus on whether the plaintiff is a proper party to bring this

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[8]An individual must have personal standing to maintain an action under Section 301 was more recently noted in Wooddell v. International Brotherhood of Electrical Workers, Local 71, 502 U.S. 93, 98, n. 4 (1991).

suit. . .although that inquiry often turns on the nature and source of the claim asserted. . ." Raines v. Byrd, 117 S. Ct. 2312, 2317 (1997).

In Harris v. Chemical Leaman Tank Lines, Inc., 437 F. 2d 167, 170 (5th Cir. 1971), (*per curiam*), the Court applied a balancing of interest test, noting that if the contract plaintiff relies upon contains a grievance and arbitration provision, then the balance falls to the Union because national labor policy favors the use of arbitration and the Union, if it fails in its duty, may always be sued by the individual. This holding is consistent with why Smith v. Evening News Ass'n., *supra* overruled Westinghouse and opened Section 301 to lawsuits involving wages but did not suggest in its ruling that Section 301 gave the individual standing to do so.

The scope and limitations of Section 301 were just being developed at the time Smith v. Evening News Ass'n. was decided. It was clear, however, that at the heart of the developing law associated with Section 301 were the paramount interest of the Union to maintain such actions and

the role the grievance and arbitration provisions would play.[9]

The Sixth Circuit found the individual had standing by creating several fictions. The individual has standing where the "Union owes no duty to the plaintiff because the plaintiff is not a member of the bargaining unit represented by the Union." Since, "plaintiffs here have no fair-representation claim against either the CWA or the IBEW because neither Union has the authority to assert claims on their behalf under the MFG-3 agreement". . ." plaintiffs plainly qualify as third-party beneficiaries..."

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[9]Section 301 authorizes federal courts to create a body of federal law for enforcement of collective-bargaining agreements; Textile Workers v. Lincoln Mills, 353 U.S. 448, 450-51, 456 (1957); substantive principles of federal labor law are paramount, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962); the Steelworkers Trilogy that elevates the grievance and arbitration provisions of a collective-bargaining agreement to the preferred method of resolving disputes, and all doubts should be resolved in the favor of arbitrability. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960).

thus they have standing to maintain the action. (App. A1)

It is axiomatic that ". . .a suit properly brought under Section 301 must be a suit. . .for violation of a contract between an employer and a labor organization. . ." Wooddell v. International Brotherhood of Electrical Workers, Local 71, 502 U.S. 93, 98 (1991). Since the Sixth Circuit found that plaintiff's claims were based on the MFG-3 agreement, the Sixth Circuit's finding that the CWA had no authority to enforce its own contract is paradoxical. Clearly, the party to the very contract plaintiffs rely upon may enforce it. The Sixth Circuit's holding is also in direct conflict with the Ninth Circuit's holding in United Food & Commercial Workers Union, Local 197 v. Alpha Beta Co., 736 F. 2d 1371 (1984) which compelled the employer to arbitrate a dispute as to whether the employer must continue to make benefit payments even though the individual had left the bargaining unit.

Nor does the labeling of plaintiffs as third-party beneficiaries create

standing.[10] Whether plaintiffs are third-party beneficiaries or not, ". . .third-party beneficiaries generally have no greater rights in a contract than does the promisee." United Steelworkers of America v. Rowson, 495 U.S. 362, 375 (1990). Thus, if plaintiffs have standing, they must exhaust the grievance and arbitration provisions of the very contract they seek to enforce and are bound by the six-month statute of limitations contained in NLRA, Section 10(b), 29 U.S.C. Section 160(b). (App. R1; Point B of this Petition).

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[10]As relabeling a contract claim a tortious breach of contract will not defeat the preemptive force of Section 301, Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985), labeling plaintiffs as third-party beneficiaries will not give them standing to enforce the contract.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

James D. Cutlip

James D. Cutlip
Counsel of Record

Date: October 1998

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Ex.8 Order of U.S.D.C. for the Middle Dist. of Florida - Orlando Div. in Case No. 94-580-CIV-ORL-18, *Adams vs. AT&T* . . . . . L1 - L17

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Ex.B - Letter from Gary A. Snyder to Richard E. Lord, 4/8/94 . . . . . M1 - M2

Ex.C Letter from
Robert D. Kurnick to
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FINAL OPINION

Sixth Circuit Case №. 96-4397
Filed June 2, 1998

Pages A-1 thru A-34

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

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(6th Cir.)
File Name: 98a0172p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

6th Circuit
Court of Appeals
Filed 6/2/98

Roberta E. Anderson, et al.,
Plaintiffs-Appellants,

Communications Workers of America,
Plaintiff-Appellee,

v.

AT&T Corporation,
Defendant-Appellee.

No. 96-4397

Appeal from the United States District Court for the Southern District of Ohio at Columbus.

No. 94-00851--George C. Smith, District Judge.

Argued: March 19, 1998

Decided and Filed: June 2, 1998

Before: BOGGS, NORRIS, and MOORE, Circuit Judges.

COUNSEL

ARGUED: Richard E. Lord, Reynoldsburg, Ohio, for Appellants. James D. Cutlip, AMERICAN TELEPHONE & TELEGRAPH CORPORATION, Morristown, New Jersey, for Appellees.

ON BRIEF: Richard E. Lord, Reynoldsburg, Ohio, for Appellants. James D. Cutlip, AMERICAN TELEPHONE & TELEGRAPH CORPORATION, Morristown, New Jersey, Stuart M. Gordon, PORTER, WRIGHT, MORRIS & ARTHUR, Columbus, Ohio, for Appellees.

OPINION

BOGGS, Circuit Judge. In this case, 58 employees of defendant AT&T Corporation ("AT&T"), each of whom works at an AT&T manufacturing plant in Columbus, Ohio, and is represented for collective-bargaining purposes by the International Brotherhood of Electrical Workers Local 2020 ("IBEW"), sued AT&T to recover benefits they allege were conferred on them by a collective-bargaining agreement negotiated while they worked at various other AT&T facilities and were represented by a

different union, the Communications Workers of America ("CWA"). The district court dismissed the case on AT&T's summary-judgment motion, holding as a matter of federal labor law that benefits conferred upon workers when they are part of a collective-bargaining unit represented by one union cannot follow those workers when they transfer within the same company to a new collective-bargaining unit represented by a different union. Because we find no basis in federal labor law for treating such workers differently from retirees or other workers who have left the original bargaining unit, but who clearly are entitled to continued receipt of previously vested benefits, we now reverse.

I

The plaintiffs in this case contend that they are entitled to certain supplemental wage and pension payments under a collective bargaining agreement negotiated by CWA, their former collective-bargaining representative, while they were employed at AT&T plants in Arizona, North Carolina, and Missouri. As with any contract dispute, the central question presented is the intent of the contracting parties: here, whether the

parties intended these wage and pension supplements to be "portable." We therefore begin by examining the background of the agreement under which the disputed wage and pension supplements were to be paid.

Beginning in the 1940s, certain hourly production workers at AT&T's manufacturing facilities received "special supplementary wage treatments" ("SSWTs"). SSWTs were designed to compensate workers based on performance, as measured by quantities of finished product produced by a defined group of employees. In 1986, these SSWTs were replaced by a new system of incentives called special hourly payments ("SHPs"), which were calculated based on seniority rather than on productivity. In the AT&T vernacular, both SSWTs and SHPs are referred to as "plugs" or "wage supplements."

In 1986, when all the plaintiffs in this case were represented by the CWA, AT&T conducted collective-bargaining negotiations with the national organizations of both the CWA and the IBEW. AT&T proposed two major changes to the then-existing collective bargaining agreements: first, AT&T proposed to consolidate multiple pay-grade levels into only two or three such levels; and

second, AT&T proposed to eliminate wage incentives, including SSWTs. The CWA initially resisted the proposal to eliminate wage incentives. Later, the CWA agreed in principle to a system under which production workers who had been receiving wage incentives would receive a substitute consisting of an additional payment added to the negotiated base wage, an additional increase in the base wage itself, and an adjustment to the pension system. Because the parties were unable to agree on whether this new payment structure would apply to workers who were not already receiving the existing wage incentives, however, the CWA went on a 29-day strike.

During the strike, Robert E. Allen, AT&T's newly elected president, sent a letter to all AT&T production employees represented by the CWA (including the plaintiffs), copies of which were reproduced in newspaper advertisements in areas where AT&T plants were located. Allen's letter purported to describe the substantive provisions of AT&T's offer to the CWA. In his letter, Allen stated:

> We also plan to replace wage incentives in all of our factories. The incentive payments will be replaced with additional increases of 2% or

> 3% in the base wage, depending on location. That increase is in addition to the 8% increase called for in our offer. In addition, wage-incentive employees will receive special monthly payments based on their wage incentive earning history. *These payments will be made to employees for as long as they are employed by the company.* Special pension adders ranging from 16% to 24% of current pension band values depending on locations, will be applicable to all wage-incentive employees.

(Emphasis added). In an apparent reference to "pension adders," Allen further stated that "nearly half of all production workers will earn pension increases ranging from 3.3 percent to 12.7 percent as a result of this grade-level consolidation."

Shortly after the CWA membership received Allen's letter, the CWA members voted to end the strike, based in part on the recommendation of the national CWA leadership. A key reason for the CWA's recommendation was AT&T's promise that current employees would be protected against income erosion caused by AT&T's

wage-level consolidation and elimination of plugs and pension adders. In its final bargaining report to the membership, the CWA stated:

> In recognition of the changing structure in the manufacturing environment, CWA and AT&T have agreed to eliminate the Wage Incentive Plans. Workers will be compensated for this change through a restructuring of hourly pay through the Manufacturing Grade Level Consolidation Plan combined with a special hourly payment supplement. Wage Incentive workers and any day workers on the payroll as of June 1, 1988 who performed wage incentive work at any time over the past three years will be eligible for the special hourly payments. *These payments will continue as long as the worker remains in a production occupation level (or tester occupation level in Merrimack Valley and the North Carolina Works).*

(Emphasis added). The final approved draft of the agreement, known as the "MFG-3" agreement, also reflected the

understanding that current employees would receive plugs for the duration of their employment with AT&T:

> Payment of this [supplementary wage] allowance shall begin as of the effective date of such reclassification and will continue as long as the employee remains in a PRODUCTION OCCUPATION LEVEL.

See Joint Appendix ("J.A.") at 54 (provision applicable to Kansas City employees), 56 (provision applicable to North Carolina employees), 60 (provision applicable to Phoenix employees).

The MFG-3 agreement, of which the wage-supplement provisions were a part, took effect on June 29, 1986. The agreement was to be in effect for three years, through June 1989. Beginning in January 1988, AT&T announced that it was going to close or downsize various manufacturing plants around the country. On January 20, 1988, for example, AT&T announced the closing of the North Carolina Works. Almost immediately, local CWA officials met with national CWA officials and AT&T labor relations representatives to ascertain whether displaced North Carolina employees who transferred to other plants would continue to receive their wage

supplements. AT&T's initially took the position that wage supplements would not be portable because the IBEW, which represented AT&T production workers at certain other facilities, would object to a situation in which some production workers at a facility received wage supplements while others did not.[1]

In June 1988, AT&T agreed to pay wage supplements through June 1989 to all North Carolina Works employees, including those who had transferred to an IBEW location. Ron Allen (the national CWA president and the lead CWA negotiator) and J.J. Dowdall (an AT&T negotiator) further agreed that all workers who transferred from the North Carolina Works, including those who transferred to AT&T facilities where applicable collective-bargaining agreements did not provide for wage supplements, would receive a one-time lump-sum payment calculated based on their wage-supplement rate immediately before their transfer date, times a multiplier to account for

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[1]Plaintiffs assert in their brief that "there is nothing in the IBEW's collective bargaining agreement that precludes such payments [of wage supplements]," and this assertion is not contradicted by the record evidence.

factors such as overtime hours worked. These negotiations resulted in the adoption of the 1989 "MFG-4 Master Agreement," in which the CWA was able to retain provisions for the payment of wage supplements at all of the facilities at which these supplements had been paid under the MFG-3 agreement (except at the North Carolina Works, which had been closed). The eligibility and formula for both benefits was the same as that agreed upon as the result of the 1986 negotiations.

The MFG-4 Master Agreement provided little solace for the plaintiffs in this case, however. Beginning in 1989, the plaintiffs transferred from the defunct North Carolina Works, the Phoenix Works, and the Kansas City Works to AT&T's Columbus Plant. At the time they transferred to Columbus, the former Kansas City and Phoenix employees had been receiving their wage supplements, while the CWA was negotiating with AT&T about the right of North Carolina employees to continue receiving wage supplements. Upon their transfer to

Columbus, however, all plaintiffs stopped receiving wage supplements.[2]

The plaintiffs unsuccessfully sought assistance from both the CWA and the IBEW. The plaintiffs' conundrum was that the CWA was no longer their bargaining representative and could not bargain on their behalf, while the IBEW could not bring a grievance to enforce a right created under an agreement to which it was not a party. The plaintiffs therefore filed this action.

II

The plaintiffs filed their original complaint on September 6, 1994, in the United States District Court for the Southern District of Ohio. As a result of a district court order requiring that the CWA be joined as an involuntary plaintiff

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[2]Perhaps tellingly, AT&T's position at the time was not only that employees formerly represented by the CWA could not receive wage supplements when they transferred to IBEW facilities, but even that employees formerly employed at one CWA facility could not continue to receive wage supplements when they transferred to a different CWA facility. This position was rejected in May 1993, when an arbitrator ruled that wage supplements were portable among different CWA facilities.

and that the IBEW and its local affiliate be joined as involuntary defendants, the plaintiffs filed an amended complaint on April 27, 1995. In their amended complaint (which invoked Section 301(a) of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185)(a)), plaintiffs alleged that they had been wrongly deprived of wage and retirement benefits (to wit, the nonpayment of their wage supplements and pension adders). They therefore sought damages representing the amount of lost wage supplements and pension adders. Plaintiffs also asserted an estoppel theory, presumably based on statements made by Robert Allen and members of AT&T's negotiation team assuring the CWA membership that wage-supplement and pension-adder benefits would be paid for the duration of the CWA members' employment with AT&T. Finally, plaintiffs sought punitive damages of at least $4 million, plus attorney's fees.

In March 1996, after taking discovery, AT&T moved for summary judgment. AT&T argued principally that the CWA was not legally empowered to negotiate for benefits that would follow workers to facilities at which the CWA was not their designated bargaining representative; that the plaintiffs

lacked standing to bring this action in their individual capacities, since they were not signatories to the MFG-3 agreement; that the plaintiffs' claims were barred by accord and satisfaction; that their claims were time-barred; and that the plaintiffs had failed to exhaust their administrative remedies. AT&T also proffered a letter from Ron Allen, the CWA's lead negotiator, stating that in fact the CWA had not bargained for wage-supplement benefits that would be portable between CWA and non-CWA facilities.

In response, the plaintiffs filed a cross-motion for partial summary judgment in which they argued that there was no genuine dispute as to AT&T's liability to pay wage-supplement and pension-adder benefits to Columbus employees who had transferred from the Kansas City, North Carolina, and Phoenix plants. The plaintiffs also advanced, for the first time, a theory of recovery premised on the idea that AT&T's failure to pay pension adders was a violation of the Employee Retirement Income Security Act ("ERISA"). Among other things, the plaintiffs supported their motion with affidavits from several individual plaintiffs, stating that they understood CWA and AT&T representations to mean that

they would receive wage supplements and pension adders for the duration of their AT&T employment, that they never accepted any payments from AT&T as an accord and satisfaction of future claims for wage-supplement or pension-adder payments, that the CWA and the IBEW had refused to file grievances on their behalf, and that they detrimentally relied on AT&T's promises of portable benefits in accepting transfers to the Columbus facility.

On November 26, 1996, the district court granted AT&T's motion and denied plaintiffs' motion. The district court's conclusion was simple: "plaintiffs, now represented exclusively by [IBEW] Local 2020, cannot, as a matter of law, claim plugs under the MFG-3 Agreement negotiated by the Communications Workers [of America]." The district court relied heavily on an unreported district court decision from Florida, *Adams v. AT&T Co.*, No. 94-580-CIV-ORL-18 (M.D. Fla. Feb. 1, 1996), in which the Florida district court rejected claims of AT&T employees who worked at AT&T's Orlando, Florida, facility pursuant to a labor agreement negotiated while the employees worked at another AT&T facility where they were represented by a different union. The district court refused to rely on a line

of cases, including Sixth Circuit cases, that recognize the possibility of portable "evergreen" or "status" benefits[3] that outlive the duration of the labor agreement that created them; according to the district court, these cases involved only the question of whether *retirees* could claim benefits after the expiration of a labor agreement, and did not address the case of employees who continue working but are represented by a union different from the one that negotiated the agreement in question. The district court additionally held that plaintiffs' promissory-estoppel claim was preempted by the LMRA, and that their ERISA claim was not fairly pleaded in the complaint.

On December 23, 1996, plaintiffs filed a timely notice of appeal. The notice of appeal is captioned "Roberta E. Anderson et. [sic] al., Plaintiffs, vs AT&T Corp., et. [sic] al., Defendants." The body of the notice of appeal reads as follows: "Notice is hereby giiven [sic]

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[3]CWA president Ron Allen testified in deposition that an "evergreen" or "status" provision in a collective bargaining agreement is a provision "that would have a life that might go beyond the existence of the collective bargaining agreement."

that Roberta E. Anderson et al., plaintiffs above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit the final decision and order entered in favor of defendant AT&T Corp. and against plaintiffs Roberta E. Anderson et. [sic] al., on their motions for summary judgement entered in this civil action on the 26th day of November, 1996."

III

This appeal raises five distinct legal issues. We address each issue in turn.

A

AT&T argues that this appeal must be dismissed because the plaintiffs did not name the CWA, the IBEW, and Local 2020 of the IBEW as defendants in the notice of appeal. While this argument may have had merit before the 1993 amendments to the Federal Rules of Appellate Procedure, in 1993, Fed. R. App. P. 3(c) was amended to provide that "[a]n appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." The advisory committee notes to Rule 3(c) specifically state that this amendment was adopted to permit the use

of "et al." in a case caption to designate multiple parties. *See* Fed. R. App. P. 3(c), Advisory Committee Note, 1993 Amendment. In particular, these amendments were designed to avert the harsh results reached under the old version of the rule in cases like *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), and *Walsh v. Ford Motor Co.*, 945 F.2d 1188 (D.C. Cir. 1991), where the Supreme Court and the District of Columbia Circuit, respectively, held that there was no jurisdiction over a party not personally named in the notice of appeal, even if the notice used the phrase "et al." Here, it is clear from the notice of appeal that plaintiffs meant to appeal from the summary judgment order dismissing this case as against all defendants, including the defendants made party involuntarily by order of the district court. Accordingly, we find no merit to AT&T's argument that the appeal should be dismissed due to a defective notice of appeal.

B

AT&T also argues that the appeal must be dismissed because the individual plaintiffs are not themselves signatories to the MFG-3 agreement that is the basis of the lawsuit. According to AT&T, this

fact deprives the plaintiffs of standing and this court of jurisdiction; AT&T essentially argues that the contract claim here, if any, belongs to the union, and can only be asserted either by the union itself, or by the employees in a lawsuit that seeks relief from the union for breach of its duty of fair representation. We disagree. It is true that Section 301 of the LMRA speaks in terms of labor organizations, on the one hand, and employers, on the other – with no mention made of the rights of individual employees. *See* 29 U.S.C. § 185. It is also true that the most common kind of Section 301 case is the so-called "hybrid" case, in which employees sue both their union, for breach of the duty of fair representation, and their employer, for breach of a collective bargaining agreement. However, the Supreme Court has made clear that fair-representation suits against unions are not inextricably linked to Section 301 suits against employers. *See Breininger v. Sheet Metal Workers Int'l Ass'n*, 493 U.S. 67, 86 (1989) ("a fair representation claim is a separate cause of action from any possible suit against the employer"). We therefore must decide if this is the kind

of case that can proceed solely against the employer.

In developing the principle stated by the Supreme Court in *Breininger* – that a Section 301 cause of action against an employer is logically distinct from a fair-representation cause of action against a union – we have recognized a number of situations in which individual plaintiffs, not personal signatories to a collective bargaining agreement, may nonetheless sue an employer for breach of a collective bargaining agreement without also suing the union. The most common is the situation in which the union owes no duty to the plaintiff because the plaintiff is not a member of the bargaining unit represented by the union. In these cases, we have long recognized that the plaintiff can recover for the employer's breach of a collective bargaining agreement if the plaintiff is a third-party beneficiary of the agreement. *See, e.g., United Food & Commercial Workers Local 951 v. Mulder*, 31 F.3d 365, 370 (6th Cir. 1994) ("[a]lthough § 301 contemplates suits between unions and employers for breaches of collective bargaining agreements, it also permits individual employees to sue as third-party beneficiaries of collective bargaining agreements");

Central States Southeast & Southwest Areas Pension Fund v. Kraftco, Inc., 799 F.2d 1098, 1107 (6th Cir. 1986) (to same effect); *Hazen v. Western Union Telegraph Co.*, 518 F.2d 766, 769-70 (6th Cir. 1975) (to same effect).

The present case fits nicely within this line of precedent. First, the plaintiffs here have no fair-representation claim against either the CWA or the IBEW because neither union has the authority to assert claims on their behalf under the MFG-3 agreement. *See Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971) (noting that union owes no duty of representation to individuals who are not members of the bargaining unit). Second, the plaintiffs plainly qualify as third-party beneficiaries of the MFG-3 agreement, inasmuch as that agreement specifically provided for certain fixed wage supplements and pension adders for the plaintiffs and all other AT&T employees in specified production jobs. *See Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 469 (1960) (noting that common-law formalities of third-party beneficiary contracts do not apply in the LMRA context, and that a promise in a collective bargaining agreement to pay certain wages to

employees makes those employees third-party beneficiaries of the agreement for purposes of Section 301).

Finally, we cannot accept AT&T's blanket argument that "[i]ndividuals do not have standing to enforce rights under a collective bargaining agreement when those rights belong to the collective whole"; the Supreme Court held a generation ago that the policy considerations underlying Section 301 "foreclose [a] reading of § 301 to exclude all suits brought by employees instead of unions." *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). By definition, all rights under a "collective bargaining agreement" belong to the collective whole. But where, as here, those rights are specific wage and pension guarantees applicable to specific, identifiable employees, they may be asserted by those individual employees as third-party beneficiaries of the agreement.

C

AT&T next argues that plaintiffs' claims are time-barred because the Supreme Court adopted a six-month limitations provision for Section 301 cases in *DelCostello v. International*

Bhd. of Teamsters, 462 U.S. 151 (1983).[4] This argument misapprehends the holding of *DelCostello*, where the Supreme Court took great pains to make clear that there is no generally applicable limitations period for Section 301 claims; instead, the appropriate limitations period depends on the particular claims raised in the case. *See id.* at 162. The Court began with the proposition that it has "generally concluded that Congress intended that the courts apply the most closely analogous statute of limitations under state law." *See id.* at 158. Concluding that the 90-day state-law limitations provision was too short given the facts of the case at hand, however, the Court in *DelCostello* opted to borrow the six-month statute of limitations applicable to federal-law claims of unfair labor practices. The Court's rationale was that, because the plaintiff's claim in *DelCostello* involved both the employer's breach of a collective bargaining agreement (a contract claim that would have been

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[4]AT&T argues that plaintiffs, who transferred to the Columbus Plant by 1991 at the latest and who filed this action in 1994, are well outside the purported six-month limitations period.

subject to a 90-day state limitations period) and the union's breach of its duty of fair representation (an unfair labor practice subject to the longer six-month period under federal law), it was appropriate to apply the longer limitations period. *See id.* at 171-72.

Applying this reasoning, we have specifically held that a Section 301 suit brought by an individual as third-party beneficiary of a collective bargaining agreement is not subject to the six-month limitations period applied in *DelCostello*. *See Apponi v. Sunshine Biscuits, Inc.*, 809 F.2d 1210, 1216 (6th Cir. 1987); *Central States*, 799 F.2d at 1107-08. Rather, it is subject to the most analogous state limitations period – here, Ohio's 15-year limitations period for actions on written contracts. *See* Ohio Rev. Code § 2305.06. There can be no dispute that the plaintiffs filed their complaint well within this period, and we therefore decline to dismiss the case on limitations grounds.

D

We come now to the real substance of the district court's holding as challenged on appeal: the proposition that, as a matter of federal labor law, a collective bargaining agreement cannot

confer benefits on employees in one bargaining unit that survive the employees' transfer to another bargaining unit in which they are represented by a different union. This proposition implicates two of the most fundamental principles of labor law: first, the principle that the majority of the employees at a particular plant or other facility are entitled to select a single, exclusive bargaining representative to negotiate on their behalf, *see* 29 U.S.C. § 159(a); and second, the principle that collective bargaining agreements should be construed to effectuate the intent of the parties as expressed through the terms of the agreement, including provisions entitling employees to benefits after they leave the jobs they held at the time the agreement was negotiated. *See International Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). AT&T argues that the first principle limits the second, such that an agreement may confer benefits to which employees are entitled even after expiration of the agreement, or even after the employees retire and thus cease to be represented by the union, but not after the employees become represented by another labor union. Plaintiffs, by

contrast, contend that any "evergreen" or "status" rights that vest under a collective bargaining agreement may be fully portable, depending on the intention of the parties, not only with respect to employees who retire or who transfer to another unit subject to representation by the same union, but also with respect to employees who transfer to another unit subject to different union representation.

While this dispute is one of first impression not only in this circuit, but apparently in any federal appeals court, nonetheless three legal propositions that bear heavily on the outcome are well established. First, the Supreme Court has held that parties to a collective bargaining agreement may agree to a provision conferring benefits that accrue during the period in which the agreement is effective, but that are not actually paid until after the expiration of the agreement. *See John Wiley & Sons v. Livingston*, 376 U.S. 543, 554-55 (1964) ("We see no reason why parties could not if they so chose agree to the accrual of rights during the term of an agreement and their realization after the agreement had expired."). Second, we have held that parties to a collective bargaining agreement may agree to "evergreen" or

"status" benefits that are payable not only after expiration of the agreement, but even after termination of the employment of individuals claiming such benefits. *See Yard-Man*, 716 F.2d at 1479-80 (holding that plant closure and related employee retirements did not relieve employer of obligation to pay "nonterminating lifelong insurance benefits for the Yard-Man retirees"). Third, this court (and most other courts) have recognized that LMRA breach-of-contract cases are governed by "[m]any of the basic principles of contractual interpretation" *id.* at 1479, including the principle that "the court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent." *Ibid.*

The collective bargaining agreements applicable to plaintiffs, each of whom transferred to Columbus from either Kansas City, North Carolina, or Phoenix, contain clear provisions relating to the payment of wage supplements. Each agreement contains a provision stating that "[t]hese special hourly payments shall begin as of June 29, 1986, and will continue as long as the employee remains in a PRODUCTION OCCUPATION LEVEL." *See* J.A. at 55 (MFG-3 provision applicable to Kansas City employees), 56 (North

Carolina employees), 60 (Phoenix employees). There is no dispute that all the plaintiffs in this case are in "production occupation level" positions at the Columbus Plant. According to the express provision of the agreement, therefore, they appear to be entitled to their wage supplements.

AT&T's sole argument to the contrary is based on an unreported district court decision from Florida. In *Adams v. AT&T Co.*, the district court confronted a fact situation essentially identical to that presented in this case: AT&T employees formerly represented by the CWA transferred from the Kansas City and North Carolina plants to a plant in Orlando, Florida, where the bargaining representative was the IBEW. The district court recognized the enforceability of "benefits negotiated by unions for retirees who are no longer active participants in a bargaining unit." *See* J.A. at 254 (reprinting district court's unreported decision; citing *United Food & Commercial Workers Int'l Union v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985), and *Yard-Man*, 716 F.2d 1476)). The district court also recognized that "unions may negotiate provisions that can be enforced even if an employee is transferred away from a

bargaining unit." *Ibid.* (citing *United Food & Commercial Workers Union v. Alpha Beta Co.*, 736 F.2d 1371 (9th Cir. 1984)). However, without citing any authority, the district court went on to hold that "[b]ecause Plaintiffs have transferred to another facility where IBEW is their exclusive representative with regard to wages, Plaintiffs can no longer reap benefits negotiated by CWA with regard to their constituents." *See id.* at 255.

Given the number of different circumstances in which courts have enforced the "evergreen" or "status" rights of employees no longer represented by the union that negotiated the rights, we find the *Adams* decision to be unpersuasive (and, being unreported, to have little or no precedential value even within its own jurisdiction). The facts relied on by the district court there – that, under the LMRA, an employee may have only one bargaining representative, and that the employees claiming benefits were represented by a union with no power to assert claims based on a collective bargaining agreement negotiated by a different union – are of no moment in a case where employees are claiming true "status" benefits, because it is the individual employee and not the union who has a cause of action to recover those

benefits under Section 301. As we said in *Yard-Man*:

> The appellants misapprehend the meaning of *Pittsburgh Plate Glass* insofar as vested retiree benefits are concerned. Clearly, the union may choose to forego such benefits in future negotiations in favor of more immediate compensation. It may not, however, bargain away retiree benefits which have already vested in particular individuals. Such rights, once vested upon the employee's retirement, are interminable and the employer's failure to provide them actionable under § 301 *by the retiree*.

Yard-Man, 716 F.2d at 1482 n.8 (emphasis added).

We can ascertain no principled distinction between a case where an employee retires and then personally files a lawsuit claiming lifetime retirement benefits and a case where an employee transfers to a location with different union representation and then files a lawsuit claiming wage-supplement benefits to which he is entitled for the duration of his company employment. In

each case, the plaintiff is no longer a member of the bargaining unit covered by the original collective bargaining agreement that gave rise to the benefits in question. Moreover, in each case, the plaintiff sues to vindicate vested contract rights. In these circumstances, AT&T's position, based as it is on the exclusive-representation provision of the LMRA, is a red herring. It need not distract us from the relatively simple contract dispute at issue.

"Simple," we say, because on appeal AT&T does not argue that the MFG-3 agreement means something other than what it explicitly says: that each employee in the relevant bargaining units in 1986 (including, *a fortiori*, the plaintiffs here) was entitled to payment of wage supplements "as long as the employee remains in a production occupation level" position. It is difficult to imagine a contract promise less ambiguous than that, and, as explained above, there is no legal reason why such a promise is unenforceable even when the beneficiary of the promise moves to a new bargaining unit with different union representation. We therefore will reverse both the district court order granting AT&T's motion for summary judgment and the order denying the plaintiffs' motion for

summary judgment. *Cf. Tamarind Resort Assocs. v. Government of the Virgin Islands*, 138 F.3d 107, 109 (3d Cir. 1998) (where contract terms are unambiguous, meaning of contract is question of law resolvable on summary judgment).

E

Though not necessary to our disposition, we pause to note AT&T's argument that the plaintiffs' request that AT&T be estopped from denying its liability for future wage-supplement payments is preempted by Section 301.[5] Addressing this argument, the district court stated that "as AT&T correctly points out, plaintiffs' purported estoppel claim is preempted. *See Jones v. Truck Drivers Local Union No. 299*, 838 F.2d 856, 860 (6th Cir. 1988)." The district court's opinion was incorrect in two respects. First, the *Jones* case does

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[5]The plaintiffs' estoppel theory is based principally on the letter from Robert Allen representing that wage supplements and pension adders would be paid to employees who worked in CWA bargaining units in 1986 for the duration of their careers as production workers at AT&T, and the plaintiffs' alleged detrimental reliance (to wit, ending the strike) thereon.

not even mention the words "estoppel," "estop," or "estopped," much less hold that all principles of estoppel are preempted (or, more precisely, nullified) by the LMRA. Second, we do not read plaintiffs' complaint to assert estoppel (promissory, equitable, or otherwise) as an independent claim for relief; it merely states that AT&T should be "estopped from denying" that it is liable for future wage-supplement payments to plaintiffs.

The federal common law of contract applicable under the LMRA includes the doctrine of promissory estoppel. *See Apponi v. Sunshine Biscuits, Inc.* 809 F.2d 1210, 1217 (6th Cir. 1987). "The elements constituting estoppel, as defined by federal common law, are: (1) conduct or language amounting to a representation of material facts; (2) the party to be estopped must be aware of the true facts; (3) the party to be estopped must intend that the representation be acted on or act such that the party asserting the estoppel has a right to believe it so intended; (4) the party asserting the estoppel must be unaware of the true facts; and (5) the party asserting the estoppel must detrimentally and justifiably rely on the representation." *Ibid.* While AT&T

disputes this, it is reasonably clear that each of these elements is satisfied by the letter of Robert Allen described above.

First, Allen's statement that "[t]hese payments will be made to employees for as long as they're employed by the company" certainly sounds to us like a representation of material fact. Second, while AT&T asserts that there is no evidence showing Allen to have been aware of the true facts, the fact that Allen had apparent authority to make such a promise is sufficient to satisfy (or at least to stand in for) the awareness element. *Cf. Lucas v. Bechtel Corp.*, 800 F.2d 839, 847 (9th Cir. 1986) (upholding reliance claim under LMRA based on corporate executive's apparent authority to bind company). Third, Allen clearly intended the CWA members to rely on his representation that the wage-supplement and pension-adder benefits would last for the duration of their employment with AT&T; the stated purpose of the letter was to persuade CWA members to end a costly strike and accept AT&T's contract offer. Fourth, even AT&T appears to concede that plaintiffs were unaware of the true facts at the time they ratified the MFG-3 agreement; AT&T relies exclusively on the proposition that

plaintiffs should have been aware by *1989* that wage-supplement payments would not be made to transferees to the Columbus Plant – but this is three years after plaintiffs relied on AT&T's promise and voted to ratify the contract. Finally, there appears to be no genuine dispute as to whether plaintiffs actually relied on AT&T's promises; they have submitted sworn affidavits averring that they did so rely, which is valid evidence under Fed. R. Civ. P. 56.

In sum, while the clear contract language involved allows us neatly to resolve the plaintiffs' claims for relief, the record could well have supported a similar result on an estoppel theory. Contrary to the district court's holding, there is nothing in our cases that excludes the various doctrines of estoppel from the federal common law of contract the governs suits brought under the LMRA.

IV

For the foregoing reasons, the judgment of the district court is REVERSED, and the case is REMANDED to the district court with instructions to grant the plaintiffs' motion for partial summary judgment.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER DENYING
PETITION *EN BANC*

Sixth Circuit Case №. 96-4397
Filed July 10, 1998

Pages B-1 thru B-2

96-4397

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

6th Circuit
Court of Appeals
Filed 7/10/98

ROBERTA E. ANDERSON, ET AL., *Plaintiffs-Appellants,*	)	
COMMUNICATIONS WORKERS OF AMERICA, *Plaintiff-Appellee,*	)	
v.	)	**ORDER**
AT&T CORPORATION, *Defendant-Appellee.*	)	

BEFORE: BOGGS, NORRIS, and MOORE, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for reharing has been referred to the original panel.

The panel has futher reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Leonard Green, Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

OPINION AND ORDER

Sixth Circuit Case №. 96-4397
Filed November 26, 1996

Pages C-1 thru C-17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Roberta E. Anderson, et al.,
Plaintiffs,

Southern Dist.
of Ohio
Filed 11/26/96

-V-

Case No. C-2-94-851
JUDGE SMITH
Magistrate Judge Abel

AT&T Corp., et al,
Defendants.

OPINION AND ORDER

Plaintiffs work for defendant AT&T. Plaintiffs assert that defendant has improperly failed to pay them wage supplements in violation of § 301 of the Labor-Management Relations Act, 29 U.S.C. §185. Plaintiffs seek declaratory relief and damages.

Both sides move for summary judgment. This case presents the issue whether a promise to pay wage incentives under one collective bargaining agreement transfers with an employee who moves to a location represented by a different union and covered by a different collective bargaining agreement. For the following reasons the Court denies plaintiffs' summary judgment motion and grants AT&T's summary judgment motion.

I.

A.

Acronyms designate just about everything. The law is no exception. Acronyms designate laws: ERISA, LMRA, ADA, ADEA, RICO. Acronyms often describe the parties in lawsuits, their agreements, geographic locations, and the like. Here, the lead defendant's corporate name is an acronym.

By themselves, acronyms mean nothing. Often context provides little to decipher them. Acronyms create a code or subdialect for every conceivable area of specialized knowledge. When writing is complex, acronyms, while saving space, frequently add unnecessarily to the complexity. For example, a reader who does not share the writer's specialized knowledge may begin to confuse two or more similar acronyms. The Court dislikes acronyms ("CDA").

The Court strongly believes that the better practice is to use one or two descriptive words instead of a meaningless acronym. To illustrate the point, the Court provides the following glossary of acronyms used throughout the parties' papers:

ATS = AT&T Transfer System
("Transfer System")

CBA = Collective Bargaining Agreement ("agreement")

CWA = Communications Workers of America ("Communications Workers")

EORS = Employment Opportunities Review System ("Review System")

FCP = Facility Closing Process ("Closing Process")

IBEW= International Brotherhood of Electrical Workers, Local Union 2020 ("Local 2020")

MFG-3= Manufacturing General Agreement, the Agreement negotiated by the Communications Workers dated June 1, 1986, to cover three the year period from 1986–1989

NCW = North Carolina Works

SEP = Special Hourly Payment ("special payment" or "plug")

SSWT = Special Supplementary Wage Treatment ("special payment" or "plug")

The Court will not use the acronyms, but will instead use the terms set forth in the parentheses, or the entire term.

B.

Plaintiffs are individuals who worked at defendant AT&T's manufacturing plants in North Carolina, Kansas City, and Phoenix. When they worked at those

locations, the Communications Workers,[1] a union, repre-sented plaintiffs in collective bargaining with AT&T. In 1986, the Communications Workers were on strike against AT&T. One of the issues that precipitated the strike was wage incentives. AT&T desired to consolidate nine pay levels into two or three occupational levels. To accomplish this AT&T offered to make Special Supplementary Wage Payments to make up the difference for wages lost due to reclassification. AT&T also wanted to eliminate certain wage incentives. In return, AT&T proposed to pay Special Hourly Payments. The difference between the two kinds of payments is of no consequence in this case, and the Court will call both of them "special payments" or "plugs."

During the strike, on June 12, 1986, AT&T's president elect, Robert E. Allen, sent a letter to each striking employee. The letter promised that the employees would receive the special payments, or plugs as long as they were employed by AT&T. AT&T ran full-page newspaper

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[1]Plaintiffs have named the Communications Workers as an involuntary plaintiff.

articles which contained the same promise.

To end the strike, the Communications Workers and AT&T entered into a new Agree-ment, the "MFG—3." MFG—3 covered several AT&T facilities where the Communications Workers represented the employees. The MFG-3 Agreement provided for the plugs. The Agreement provided that the plugs would "continue as long as the employee remains in a PRODUCTION OCCUPATIONAL LEVEL." Each plaintiff in this case asserts that he or she was eligible to receive plugs under the MFG-3 Agreement.

One January 20, 1988, AT&T issued a notice that it would close its North Carolina Works. Beginning in 1989, plaintiffs began to transfer to AT&T's Columbus, Ohio facility.

In Columbus, a different union, Local 2020[2], represents AT&T's employees, including plaintiffs. AT&T's agreement with Local 2020 does not contain the special payments AT&T had provided plaintiffs under the MFG-3 Agreement with the Communications Workers.

When plaintiffs transferred to Columbus, AT&T stopped paying plaintiffs

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[2]Plaintiffs have named Local 2020 as an involuntary defendant.

the special payments under the MFG-3 Agreement. Instead, AT&T paid plaintiffs under the different agreement it reached with Local 2020 covering the Columbus facility. In contrast, other employees have received the special payments after transferring from one facility represented by the Communications Workers to another facility also represented by the Communications Workers.[3]

Plaintiffs contend they are still entitled to the special payments. Plaintiffs attempted to enlist the help of Local 2020, but Local 2020 indicated that it could not help plaintiffs because the benefits plain-tiffs seek are not within the agreement Local 2020 negotiated with AT&T. Plaintiffs sought assistance from the Communications Workers, but the Communications Workers indicated that it could not assist plaintiff because Local 2020 now represents plaintiffs.

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[3]This was not initially the case. The matter has been arbitrated three times, and on each occasion the arbitrator has held that the transferred employees were entitled to continued payment of the plugs.

II.

The procedure for granting summary judgment is found in Fed. R. Civ. P. 56(c), which provides:

> The judgment sought shall be rendered forthwith if the pleadings, deposi-tions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is en-titled to judgment as a matter of law.

The evidence must be viewed in the light most favorable to the nonmoving party. Adickes v. Kress & Co., 398 U.S. 144, 158–59 (1970). Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby. Inc., 477 U.S. 242, 248 (1986). Summary judgment is appropriate, however, if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. Celotex Core. v. Catrett, 477 U.s. 317, 322 (1986); see also Matsushita Electric Indus. Co. Ltd.

v. Zenith Radio Corp., 475 U.S. 574 (1986).

The Sixth Circuit Court of Appeals has recognized that Liberty Lobby, Celotex and Matsushita have effected "a decided change in summary judgment practice," ushering in a "new era" in summary judgments. Street v. J.C. Bradford & Co., 886 F.2d 1472, 1476(6th Cir. 1989). The court in Street identified a number of important principles applicable in new era summary judgment practice. For example, complex cases and cases involving state of mind issues are not necessarily inappropriate for summary judgment. Id. at 1479.

In addition, in responding to a summary judgment motion, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment."' Id. (quoting Liberty Lobby, 477 U.S. at 257). The non-moving party must adduce more than a scintilla of evidence to overcome the summary judgment motion. Id. It is not sufficient for the nonmoving party to merely "'show that there is some metaphysical doubt as to the material facts."' Id. (quoting Matsushita, 475

U.S. at 586). Moreover, "(t)he trial court no longer has a duty to search cue entire record to establish that it is bereft of a genuine issue of material fact." Id. That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact.

III.

AT&T advances several grounds for summary judgment: (1) plaintiffs, now represented exclusively by Local 2020, cannot, as a matter of law, claim plugs under the HFG-3 Agreement negotiated by the Com-munications Workers; (2) plaintiffs lack standing; (3) plaintiffs cannot show that either union, Communications Workers or Local 2020, breached any duty toward them; (4) plaintiffs failed to initiate this action within six months after AT&T stopped paying them the special payments; and (5) on the merits the MFG-3 Agreement did not provide for continuation of the special payments for an employee who transferred outside the facilities MFG-3 covered. The Court concludes that AT&T's first ground is dispositive and therefore finds it unnecessary to reach the other grounds for summary judgment.

AT&T argues that plaintiffs lost any rights they may have had once Local 2020 became their exclusive representative. In so arguing, AT&T relies on a Florida district court decision, Adams, et al. v. AT&T, Case No. 94-580-CIV-ORL-18 (M.D. Fla. Feb. 1, 1996).

The facts of Adams are virtually identical to those in the instant case. The only difference is that in Adams the plain-tiffs transferred to AT&T's Orlando, Florida facility. Adams presented the same issue the Court faces in the instant case: whether the right to special payments which employees acquired in one bargaining unit transfers with the employees when they move to another location in the same company in which a different union represents the employees.

As in the instant case, in AT&T argued as threshold matters that the plaintiffs lacked understanding to bring an action under § 301 of the Labor-Management Relations Act, and that even if the plaintiffs had standing, the plaintiffs had failed to exhaust the contractual arbitration remedies.

The court in Adams held that the right to special payments did not transfer. In doing so, the court declined to reach the standing and

exhaustion issues. The Adams court reasoned:

> The court concludes that federal labor law provides a simpler solution to the parties' dilemma that does not require resolving it. Regardless of whether Plaintiffs can bring this action under section 301's requirements, CWA had no authority to negotiate benefits to Plaintiffs after they left CWA's bargaining unit. Under federal law,
>
> > Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.
>
> 29 U.S.C. § 159(a)(1994). If the court were to require AT&T to make these wage supplement payments to Plaintiffs, Plaintiffs would receive the benefits under their CWA contract while being represented exclusively by IBEW in the Orlando

> facility. However, because IBEW is Plaintiffs' exclusive representative with regard to wages and other conditions of employment, the MFG-3 Agreement cannot apply to Plaintiffs as a matter of law. In other words, according to section 159(a), CWA can only contract to provide benefits to workers in its bargaining unit; once those workers leave for another bar-gaining unit represented by another union, they are no longer entitled to the benefits of a CWA-negotiated contract.

Adams at 9-10. The court in Adams directly answered the ultimate issue the instant case presents.

In the instant case, plaintiffs devote most of their legal memoranda to the issues of standing, exhaustion, and whether this is a hybrid case.[4] Plaintiffs ignore Adams.

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[4]Several pages of plaintiffs' brief in support of their summary judgment motion (Doc. 47) address the standing and exhaustion issues, and virtually all of plaintiffs' memorandum opposing A&T's summary judgment motion (Doc. 56) is devoted to these and similar threshold issues.

Plaintiffs present one argument on the merits which the court in Adams considered and rejected. Plaintiffs contend that the Communications Workers provided plaintiffs a "status" because the special payments were to continue "as long as" they remained in pro-duction level jobs. See John Wiley & Sons. Inc. v. Livingston, 376 U.S. 543, 555 (1964) ("We see no reason why parties could not if they so chose agree to the accrual or rights during the term of an agreement and their realization after the agreement had ex-pired."). For example, as plaintiffs point out, lifelong insurance may be provided for retired employees. See UAW v. Yard-Man. Inc., 716 F.2d 1476, 1482 (6th Cir. 1983) (retirement benefits are "status" benefits which outlive the collective bargaining agreement and continue, as long as the beneficiary remains a retiree), cert. denied, 465 U.S. 1007 (1984).

The Adams court noted that in such "status" cases, in contrast, the employees had left the collective bargaining unit, but had not become part of another, different collective bargaining unit represented by a different union. The distinction goes to the core of the holding in Adams: the employees' right to receive special

payments ceased when another union began to represent them in a different collective bargaining unit. In other words, a union may be able to bargain for benefits that outlive the agreement, but a union cannot create a benefit that will survive transfer to a different bargaining unit covered by a different collective bar-gaining agreement negotiated by a different union. Once an employee transfers to another collective bargaining unit, his or her rights are governed exclusively by the agreement that covers the new location.

For the same reason, under Adams, plaintiffs' reliance on the arbitrators' decision is misplaced. Unlike Adams or the instant case, the cases the arbitrators decided involved employees who transferred from one location represented by the Communi-cations Workers to another location also represented by the Communications Workers.

Collective bargaining is unquestionably the centerpiece of federal labor law. See NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967); Wood v. National Basketball Ass'n, 809 F.2d 954, 959 (2nd Cir. 1987); see generally Robert A. Gorman, Basic Text on Labor Law (West

1976) at 374–75. The exclusivity provision of § 159(a) is a key component of the process. Wood at 959.

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appro-priate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees.

Id. The exclusivity principle must be fol-lowed even when it puts the individual em-ployee at a disadvantage. See Wood at 959-60.

The Court agrees with the court in Adams that it would undermine the exclusivity principle to allow plaintiffs to pursue special payments under a collective bar-gaining agreement negotiated by a union that no longer represents them. Plaintiffs are now part of the bargaining unit represented exclusively by Local 2020; any rights plaintiffs have are those set forth in

the agreement between AT&T and Local 2020. Plaintiffs no longer have rights under the Agreement secured by the Communications Workers. Adams. Indeed, the Communications Workers could not bind AT&T with respect to employees who leave its collective bargaining unit and become part of another unit. Id.; accord Local 7-210 v. Union Tank Car Co., 475 F.2d 194, 197 (7th Cir.), cert. denied, 414 U.S. 875 (1973).

Plaintiffs make one additional argument that merits brief discussion. Plaintiffs argue that AT&T's promise to pay them plugs is enforceable under common law promissory estoppel and ERISA.[5] Plaintiffs do not fairly plead such claims in their amended complaint, and have not sought leave to do so. Moreover, as AT&T correctly points out, plaintiffs' purported estoppel claim is pre-empted. See Jones v. Truck Drivers Local Union No. 299, 838 F.2d 856, 860 (6th Cir. 1988).

In sum, the Court finds that the decision in Adams is well reasoned, and this Court will follow it. Under Adams,

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[5]As to ERISA, plaintiffs refer to AT&T's promise to pay pension adders" in addition to the special payments.

defendant AT&T is entitled to summary judgment in its favor.

IV.

Based on the above, the Court GRANTS defendant AT&T's motion for summary judgment (Doc. 44) and DENIES plaintiffs' motion for summary judgment (Doc. 46).

The Clerk shall enter final judgment in favor of defendant AT&T and against plain-tiffs dismissing this action with prejudice.

The Clerk shall remove this case from the Court's pending cases and motions lists.

The parties shall bear their own costs.

IT IS SO ORDERED.

/s/ George C. Smith, Judge
UNITED STATES DISTRICT COURT

APPENDIX D

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

JUDGMENT

Sixth Circuit Case №. 96-4397
Filed November 26, 1996

Pages D-1 thru D-1

UNITED STATES DISTRICT COURT
Southern District of Ohio
Eastern Division

ROBERTA E. ANDERSON, et al.
Plaintiff,

Southern Dist. of Ohio Filed 11/26/96

JUDGMENT IN A CIVIL CASE

V.

Case No. C2-94-851
AT&T CORP., et al., Judge Smith
Defendants. Magistrate Judge Abel

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

■ **Decision by Court.** This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Opinion and Order filed November 26, 1996, final judgement is hereby entered in favor of defendant AT&T and against plaintiffs dismissing this action with prejudice.

November 26, 1996
Date

Kenneth J. Murphy,
Clerk

/s/ Georganna Willman
(By) Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

ORDER

Sixth Circuit Case №. 96-4397
Filed March 27, 1995

Pages E-1 thru E-8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Roberta E. Anderson, et al.,
Plaintiffs,

Southern Dist. of Ohio
Filed 3/27/95

-V-

Case No. C-2-94-851
JUDGE SMITH
Magistrate Judge Abel

AT&T Corp.,
Defendant.

ORDER

Plaintiffs, numerous employees of defendant American Telephone & Telegraph Company ("AT&T"), bring this action under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185, against AT&T alleging that AT&T has breached its collective bargaining agreement ('CBA") by refusing to pay supplemental wages promised to these employees. This matter is before the Court on AT&T's November 4, 1994 motion to dismiss for failure to join indispensable parties pursuant to Rule 12(b) (7), Federal Rules of Civil Procedure.

The complaint alleges that plaintiffs were employed by AT&T at several of its plants throughout the United States. All plaintiffs were then

transferred to AT&T's Columbus, Ohio plant. At their former plants, plaintiffs were represented by the Communication Workers of America ("CWA") union. The Columbus plant workers are represented by the International Brotherhood of Electrical Workers ("IBEW") and its local, Local 2020. The complaint alleges that CWA negotiated with AT&T for the payment of wage supplements known as the "Special Supplementary Wage Treatment" ("SSWT") and the "Special Hourly Payment" ("SHP"). Such payments were to continue for as long as plaintiffs are employed by AT&T.

The complaint alleges that these payments were curtailed upon the transfer of plaintiffs to the Columbus plant in violation of the CBA. The complaint also alleges that despite three separate arbitration proceedings concerning these wage supplements, all of which were resolved in plaintiffs' favor, AT&T has still refused to pay plaintiffs their wage supplements. The complaint alleges further that plaintiffs are without a contractual remedy because CWA can no longer represent them at the Columbus plant and IBEW refuses to permit the payment of the wage supplements to plaintiffs unless all other workers at the Columbus plant receive the same

supplement. The complaint alleges that although IBEWs CBA with AT&T at the Columbus plant does not authorize the payments of wage supplements, it also does not prohibit their payment.

AT&T argues that it is entitled to have the complaint dismissed because plaintiffs have failed to join the three unions to this lawsuit. AT&T contends that because plaintiffs seek to enforce the CBA between AT&T and CWA regarding the wage supplements, the unions are indispensable parties under Rule 19, Federal Rules of Civil Procedure, since any decision by this Court interpreting and enforcing the CBA would impact on all three unions. Since they have an interest in the outcome of this lawsuit, AT&T argues that they should be joined, otherwise the case has to be dismissed.

Resolving a question of joinder under Rule 19, Federal Rules of Civil Procedure, involves a three-step process. Initially, the Court must determine whether a person who is not a party should be joined in the action if possible. Local 670 v. Int. Union, United Rubber, Etc., Workers, 822 F.2d 613, 618 (6th Cir. 1987). This first step is embodied in Rule 19 which provides in part:

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a) (1)–(2) hereof cannot be made a party, the court shall

> determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

If the Court determines that the person does not fall within one of the provisions under Rule 19(a), joinder, as well as further analysis, is unnecessary. Local 670, 822 F.2d at 618. If the Court finds that one of the criteria is satisfied, the person is one to be joined

if feasible and the issue of personal jurisdiction arises. If personal jurisdiction is present, the party shall be joined. If it is not, the party cannot be brought before the Court. If such is the case, the Court proceeds to the third step which involves an analysis of the factors set forth in Rule 19(b) to determine whether the Court may proceed without the absent party or must dismiss the action due to the indispensability of that party.

"The rule is not to be applied in a rigid manner but should instead be governed by the practicalities of the individual case." Local 670, 822 F.2d at 618 (citing Provident Tradesmen Bank & Trust Co. v. Patterson, 390 U.S. 102, 116 n. 12 (1968)). Rule 19 calls for a pragmatic approach; "simply because some forms of relief might not be available due to the absence of certain parties, the entire suit should not be dismissed if meaningful relief can still be accorded." Id. (citing Smith v. United Brotherhood of Carpenters and Joiners of America, 685 F.2d 164, 166 (6th Cir. 1982)).

Although no relief is sought against each of the unions, the Court concludes that all three are parties to be joined if feasible. CWA is a signatory to the

CBA of which plaintiffs claim that AT&T is in breach and CWA can clearly "claim an interest relating to the subject of the action." IBEW and Local 2020 represent the workers at AT&T'S Columbus plant. These workers now include the plaintiffs in this action. If plaintiffs obtain a decision in this action that they are entitled to receive the wage supplements, then IBEW and Local 2020 will represent two classes of workers at the Columbus plant—those who receive the wage supplements and those who do not. As the bargaining representatives of those employees, IBEW and Local 2020 clearly also "claim an interest relating to the subject of the action." Moreover, an order of this Court or a decision by a jury which changes the relationship of IBEW and Local 2020 to all of its members without the unions being present may practically "impair or impede [their] ability to protect that interest."

Further, if the unions are not joined, AT&T may be exposed to "otherwise inconsistent obligations." If AT&T is ordered to pay out the wage supplements to plaintiffs, IBEW and Local 2020 may have to then go to battle with AT&T for payment to those employees at the Columbus plant who would not receive the supplements. Joinder of the unions to

this action will help avoid any inconsistency. The Court assumes, as the parties seem to have as well, that personal jurisdiction over the unions can be asserted. Therefore, the three unions shall be joined to this action.

For the reasons set out above, the Court **ORDERS** plaintiffs to join the Communication Workers of America, the International Brotherhood of Electrical Workers, and Local 2020 to this action within thirty (30) days from the date of this Order. To the extent that plaintiffs comply with this Order, defendant AT&T's November 4, 1994 motion to dismiss for, failure to join indispensable parties (doc. #7) is **DENIED**.

/s/ George C. Smith
George C. Smith, Judge
United States District Court

APPENDIX F

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

AMENDED COMPLAINT AND JURY DEMAND

Sixth Circuit Case №. 96-4397
Filed September 2, 1994

Pages F-1 thru F-46

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERTA E. ANDERSON,
RUTH C. BANNER
ROSEANN V. BEAUCHAMP
BERNARD R. BITIING
CATHY D. BLACKBURN
BETTY BRANON
TROSIA S. CHAMPAGNE
ANNIE R. CLINTON
SYLVIA C. CULLENS
MARY B. DALTON
BETTY GAIL DAVIS
EVELYN DORSEY
PATSY GREEN (ELLER)
JAMES S. GABRIEL
DIANE S. HADLEY
TOMMIE HENDERSON JR.
ETHEL ROMAINE HOLLIS
MARY W. JACKSON
SUSIE D. JOHNSON
BECKY JORDAN
JANE C. KIMMER
LINDA S. LANKFORD
PHYLLIS S. PENN
JANIE H. PIERCE
MILDRED B. POWELL
ROSA MARIE RICE
BARBARA M. RODGERS
REGINALD B. SCALES
EVONNE D. SIMMONS
DORIS ANN SMITH
WADE L. TYNER,
MARIE WOOD,

(Plaintiffs - Transfers from North Carolina) and

CASE NO. C2-94-851

Southern Dist.
of Ohio
Filed 9/2/94

JUDGE GEORGE D. SMITH

MAGISTRATE Judge Mark Abel

**AMENDED COMPLAINT
and
JURY DEMAND

ELENA M. ASHFORD,
JUANITA M. BOWEN,
JERRY G. COMBS,
GEORGE W. DRIVER, JR.,
RUBY MAYS FOUNTAIN,
DARRELL W. HANKTNS,
CLARON L. HARTMAN,
CAROLYN HAYES,
ETHEL L. HOSKINS,
ALMA J. JOHNSON,
JOHN HUE LITTLETON,
HELGA L. SCOTT,
GARY L. SHELTON,
LINDA F. SHELTON,
CARL D. TOMPKINS,
LELA K. TYLER,
GARY C. WALK,
LYNN WORDEN,

(Plaintiffs - Transfers from Kansas City),

MARLON BENDER,
ELMER D. CAUDILL,
SHARON A. CRISSINGER,
THOMAS M. GREGOIRE,
GABRIELE H. JOHNSON
STEPHEN P. McCARTNEY
CHRISTIAN W. MULLER
ARTHUR EUGENE RIGGLE,

(Plaintiffs - Transfers from Phoenix)

-v-

COMMUNICATIONS WORKERS OF
AMERICA
JAMES E. IRVINE
501 THIRD STREET NW
WASHINGTON, D.C. 20001

(Involuntary Plaintiff)

-v-

AT&T CORP.,
%STATUTORY AGENT
PRENTICE-HALL CORP. SYSTEM
380 SOUTH 5th STREET
COLUMBUS, OHIO 43215

Defendant,

-v-

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
%STATUTORY AGENT
DEAN B. SCHULMAN
575 S. THIRD STREET
COLUMBUS, OH 43215

(Involuntary Defendant)

-v-

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 2020
%STATUTORY AGENT
DEAN B. SCHULMAN
575 S. THIRD STREET
COLUMBUS, OH 43215

(Involuntary Defendant)

**Pursuant to Court Order, Communications Workers of America, International Brotherhood of Electrical Workers and Local 2020 of the International Brotherhood of Electrical Workers have been joined as parties. Plaintiffs by filing this Amended Complaint pursuant to Court Order do not waive their request for a re-hearing on the issue of joinder or the arguments contained therein.

_____/

COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF (JURY TRIAL DEMANDED)

PLAINTIFFS sue Defendant and allege:

NATURE OF THE ACTION, JURISDICTION, AND VENUE

1. This is an action for breach of collective bargaining agreements between an employer and labor organizations brought pursuant to §301(a) of the Labor-Management Relations Act, 29 U.S.C. §1331 and 1337. Pursuant to Court Order, Communications Workers of America, International Brotherhood of Electrical Workers and Local 2020 of the International Brotherhood of Electrical Workers have been joined as parties.

Plaintiffs by filing this Amended Complaint pursuant to Court Order do not waive their request for a re-hearing on the issue of joinder or the arguments contained therein.

2. All Plaintiffs are adult individuals who reside within the geographic jurisdiction of the United States and/or the United States District Court, Southern District, Eastern Division. All plaintiffs are and/or were, at all times material to their claims, employed in production occupation levels at the AT&T Network Systems Columbus Plant [hereinafter "Columbus Plant"] owned and operated by defendant. All plaintiffs were transferred to the Columbus Plant from other manufacturing facilities owned and operated by AT&T under the circumstances hereinafter described.

3. Defendant, AT&T is a Delaware Corporation with its principal place of business in New York City, New York. AT&T operates a nationwide system of manufacturing facilities which was originally known as the Western Electric Company and was part of the American Telephone and Telegraph Company integrated manufacturing and communications system. The system has been historically organized under the

structure of wholly-owned subsidiaries, including AT&T Technologies, Inc. and at the current time as a number of divisions including AT&T Network Systems its successor.

4. At all times AT&T was party to numerous collective bargaining agreements with the Communications Workers of America [hereinafter "CWA"] and the International Brotherhood of Electrical Workers [hereinafter "IBEW"] and their respective local union affiliates. CWA and IBEW and their local union affiliates, are "labor organizations" within the meaning of §2(5) of the Labor-Management Relations Act of 1947, as amended [hereinafter "The Act"], 29 U.S.C. 152(5), and within the meaning of §301 of the Act, 29 U.S.C. §185.

5. AT&T, CWA, and IBEW are entities engaged in commerce within the meaning of §2(6) of The Act, 29 U.S.C. §152(6), or in an industry affecting commerce within the meaning of §2(7) of The Act, 29 U.S.C. §152(7), and within the meaning of §301 of The Act, 29 U.S.C. §185.

6. At all times AT&T was an employer within the meaning of §2(2) of The Act, 29 U.S.C. §152(2), and within the meaning of §301 of The Act, 29 U.S.C. §185. At all times AT&T maintained a

manufacturing facility located at Columbus, Ohio, situated within this Judicial District and Division. The breach of which plaintiffs complain occurred at this facility.

7. All plaintiffs are and/or were at all times material, employees within the meaning of §152(3) of The Act, 29 U.S.C. §152(3), and within the meaning of §301 of The Act, 29 U.S.C. §185.

NATURE OF PLAINTIFFS' CLAIMS

8. All plaintiffs claim that they are entitled to continue to receive wage supplements known as the Special Supplementary Wage Treatment [hereinafter "SSWT"] and/or the Special Hourly Payment [hereinafter "SHP"] for the remainder of their employment with AT&T in a production occupation level as the result of a Master Collective Bargaining Agreement negotiated between CWA and AT&T in 1986 subsequent to a strike, known as the MFG-3 Agreement. All Plaintiffs had received either or both of these supplements commencing in 1986 at their respective former work locations, immediately prior to their transfers to the Columbus Plant. AT&T discontinued payments of these supplements when the plaintiffs were transferred to the

Columbus Plant. The basis for the plaintiff employees' claims of entitlement to these payments is as follows.

HISTORY OF WAGE INCENTIVES AND RELOCATION PROGRAMS

9. Commencing in the 1940's, AT&T had paid certain production occupation workers at its manufacturing facilities an amount on top of their base wage under a wage incentive program (historically called "bonus" or "plug") which compensated workers based upon the performance, in terms of quantities of finished product, of a defined group of employees with whom they worked (known as a "wage incentive group"). This system continued, as pertains to the plaintiffs, until 1986 when it was replaced by SHP.

10. In the early 1980's, in view of the turmoil and uncertainty caused by the Court-Ordered Dissolution of the Bell System and the concomitant plant closures, reorganizations, and relocations of work and manpower caused by deregulation and divestiture, AT&T adopted a facility closing process ("FCP") for all its facilities, whether represented by either IBEW or CWA. The FCP was accepted at the national

bargaining levels by both unions and was subsequently incorporated in local collective bargaining agreements at each of AT&T's facilities, including the facilities from which the plaintiffs were later transferred to in Columbus. A copy of the master FCP is attached and incorporated by reference, designated Exhibit "1". Prior to adoption of the FCP, when an AT&T plant was closed, the rights of a worker at the closing facility were negotiated on an individual basis. AT&T implemented this company-wide program to allow covered employees to transfer to other company facilities, including those with bargaining representatives at the receiving facility different from that at the sending facility, in order to assure experienced workers of their job security and to induce long-time employees to remain with the company through the uncertain times caused by deregulation. The FCP was designed to provide for uniformity in treatment and to provide long-term employees with assurances in advance as to how they would be treated at the receiving facility if their plant was closed. The substance of the provisions pertinent to the plaintiffs' claims is that upon being transferred to a new facility under the program an employee

did not lose seniority credit for any purpose except as specified in the program. The specified exceptions did not include an exception for qualifying for wage supplements based on length of service. The FCP was included within the 1983-1986 collective bargaining agreement between AT&T and CWA, known as the "MFG-2 Agreement".

11. In 1986 national contract negotiations with CWA and with IBEW, AT&T instituted an Employment Opportunities Review System ("EORS") which provided a means for an employee to transfer from one manufacturing location to another when the job he or she held at a location had been declared surplus and he or she would otherwise have been laid off. The substance of the program is that if an employee at one manufacturing location is notified that he will be laid off and elects to come under EORS, the company will not hire a person off the street to fill a job at the receiving location but will offer it instead to the EORS participant. This procedure was established to provide job continuity to AT&T employees who would otherwise be laid off, and to determine how the participant's base wage at the receiving location would be determined. A copy of EORS is attached and incorporated by

reference, designated Exhibit "2". Pertinent to the plaintiffs' claims, EORS did not specify that the wage supplement forming the basis of this complaint would be lost if an employee were transferred pursuant to EORS. At various times and in various locations other transfer and relocation programs have been implemented through local understanding or agreement. None of the programs in effect at the time of the transfer of any of the individual plaintiffs to the Columbus Plant provide that employees who transfer under any of the programs will not receive the wage incentive forming the subject of the plaintiffs' claims at the receiving location.

BARGAINING HISTORY OF AGREEMENTS UPON WHICH PLAINTIFF'S CLAIMS ARE BASED

12. Prior to 1983, when an employee who received a wage incentive at a closing plant transferred to another plant at which wage incentives were being paid for the job to which he or she transferred, the transferred employee would also receive wage incentives at the receiving plant, regardless of whether the plant was represented by IBEW or CWA. Commencing in 1983, however, AT&T first began to seek the elimination of wage

incentives for wage incentive groups and to replace them with an additional payment no longer directly tied to production for existing employees, while eliminating incentives for new employees.

13. Negotiations with IBEW and CWA occurred at the national level at about the same time during 1983. The bargaining system in place for both IBEW and CWA was and remains essentially two-tiered. First, local committees would meet with local plant representatives to discuss issues that pertained only to an individual facility. These local negotiations would be handled by the local union affiliates of CWA and IBEW who were recognized as bargaining representatives of bargaining unit employees at each individual facility. Bargaining over issues which concerned groups of facilities represented by local union affiliates of IBEW and CWA respectively would be handled by bargaining teams chaired by representatives of the CWA and the IBEW International Unions. Historically, AT&T bargained separately with the IBEW and CWA national teams. As the result of the 1983 negotiations with the IBEW and CWA the historical wage incentive system was preserved until 1986, when the master agreements which contained local

supplements expired. However, AT&T reached agreement with the IBEW to discuss the elimination of wage incentives at two (2) of its plants represented by IBEW (Reading Works and Allentown Works) prior to the 1986 contract negotiations. Based upon these interim negotiations, the wage incentive system was eliminated at Reading and Allentown in 1984.

14. Also during the 1983 negotiations, in response to concern expressed by both IBEW and CWA over plant closings occasioned by Court-Ordered divestiture and deregulation, AT&T reached an agreement with both the IBEW and CWA to establish and implement the FCP.

1986 NEGOTIATIONS FOR THE MFG-3 AGREEMENT

15. In the 1986 national level negotiations with IBEW and CWA, AT&T proposed to eliminate the wage incentive system at all its manufacturing plants. The IBEW reached a tentative agreement with AT&T in May, 1986. In its negotiations with the CWA, as is pertinent to Plaintiffs' claims, AT&T sought two (2) major changes, First, it proposed to consolidate several pay grade levels into only two (2) or three (3)

levels (depending on location); and Second, the AT&T proposed to eliminate wage incentives.

16. Initially AT&T's proposal to consolidate pay grade levels was bargained at the local level. By agreement it was transferred to the national level and subsequently agreed to by the CWA national committee. The substance of the agreement was that any production employee whose pay was reduced due to the consolidation of classifications would receive a special supplementary wage treatment ("SSWT") which the parties commonly referred to as a "plug" to make up the difference. The SSWT was to be made to the employee for "life" as long as the employee remained in a production occupation level. In effect, those employees who were determined by agreement to be eligible for this "plug" were to be given a wage rate higher than the negotiated rate for the newly-combined job classification for the duration of his or her employment with AT&T in a production occupation level job classification.

17. During the 1986 negotiations, the CWA initially resisted AT&T's proposal to eliminate wage incentives, but later agreed in principle that production workers at CWA plants which

were currently receiving wage incentives would receive a substitute which consisted of an additional payment added to the negotiated base wage, an additional increase in the base wage itself, and an adjustment to the pension system to make up for any impact which elimination of the wage incentives would have. Because the parties were unable to reach agreement on whether this new payment would be made to workers who were not currently eligible to receive the wage incentive (as well as on other issues), the CWA went on strike, which continued for twenty nine (29) days. After the strike ended, AT&T entered into a new contract covering a number of the CWA represented facilities, including the Kansas City Works, the North Carolina Works, and the Phoenix Works, known as the "MFG-3" Agreement. This agreement included the provisions relating to the SSWT and the SHP upon which the Plaintiffs base their claims in this action.

18. During the course of the strike, the company's President-Elect Robert E. Allen, sent a letter to all CWA represented employees at their homes, dated June 12, 1986. This was also reproduced in advertisements placed in the newspapers at all affected locations.

The letter was an effort by the company to encourage the employees to end the strike and to accept AT&T's contract proposal, including the SSWT and SHP. In this letter Allen urged the employees to "look at the details" of the company's last offer and explained its meaning and intent for certain elements. With regard to AT&T's proposal to consolidate the then current nine (9) grade levels into two (2) or three (3) occupational groups, Allen said:

> "... no one will lose money under this plan. In fact, more than half of you affected by this plan -- 52% -- would earn more money and have greater head room while the remaining 48% would suffer no loss in wages..."

With regard to the proposed buyout of wage incentives, Allen's letter stated:

> "We also plan to replace wage incentives in all of our factories. The incentive payments will be replaced with additional increases of 2% or 3% in the base wage, depending on location. That increase is in addition to the 8% increase called for in our offer. In addition, wage-incentive

employees will receive special monthly payments based on their wage incentive earning history. These payments will be made to employees for as long as they are employed by the company. Special pension ladders ranging from 16% to 24% of current pension band values depending on locations, will be applicable to all wage-incentive employees." (emphasis supplied)

A copy of Allen's letter is incorporated by reference and attached as Exhibit "3".

19. The negotiations pertaining to the elimination of the wage incentives which had preceded Allen's letter commenced with the company's proposal to place the lost incentive earnings into a base rate with an additional balance to be handled by either a lump sum payment or by decreasing the incentive payments over three (3) years, resulting in complete elimination of incentives at the end of the three (3) year contract. The CWA rejected this proposal, contending that the consideration for eliminating the historical wage incentives must extend beyond the life of the current collective bargaining agreement. In computing the compensation for removal of

the wage incentive later memorialized in the MFG-3 Agreement, a certain percentage was placed in the base rate, a certain percentage was allocated to offset company losses due to the consolidation of grades, and the remainder was a special hourly payment given to qualified employees according to the schedule set forth in the agreement. It was this system, developed by the negotiating history set forth above, which Allen addressed in his letter.

20. Soon after Allen's letter was sent, the strike ended. Although they were extremely upset by Allen going "over their heads" to the membership, the CWA national representatives explained to their local union presidents that Allen's letter meant that wage-incentive-classified workers would continue to receive both the SHP and SSWT "plugs" as long as they remained in a production occupation position with the company. The local union representatives, in turn, repeated this information to their striking members; and based upon receipt of this information, the membership voted to end the strike.

21. Subsequent to the Allen letter, but before final agreement, bargaining was resumed and an understanding was reached between AT&T and the CWA that the

new "plugs" were, subject to normal contingencies of future bargaining, to be considered an "evergreen" provision continuing beyond the life of the contract then being negotiated. In the final bargaining report distributed by CWA to its local union affiliates and their members as part of the contract ratification process the CWA stated:

> "In recognition of the changing structure in the manufacturing environment, CWA and AT&T have agreed to eliminate the wage incentive plans. Workers will be compensated for this change through a restructuring of an hourly pay through the manufacturing grade level consolidation plan combined with a special hourly payment supplement... these payments will continue as long as the worker remains in a production occupation level (or tester occupation level in Phoenix and the North Carolina Works)."

A copy is incorporated by reference and attached as Exhibit "4".

AGREEMENTS UPON WHICH PLAINTIFFS' CLAIMS ARE BASED

22. The final memorialization of this negotiating history was incorporated into the MFG-3 Agreement as Appendix A. These provisions are identical for all locations covered by the agreement, including Kansas City, North Carolina and Phoenix. They are incorporated by reference and attached as Exhibit 5. Section C of Appendix A was entitled "Special Supplementary Wage Treatment." It reads as follows:

> "If an employee's existing BASE RATE exceeds the MAXIMUM RATE for the PRODUCTION OCCUPATION LEVEL to which initially assigned, the employee's BASE RATE shall be adjusted downward to equal the applicable MAXIMUM RATE. Such employee will be eligible to [sic] a supplementary wage allowance calculated and administered as follows:
>
> a. Such allowance shall be an hourly amount equivalent to the difference between the employee's BASE RATE in

effect immediately preceding such reclassification, and his or her new BASE RATE as of the effective date of such reclassification as shown in Paragraph B.

b. Payment of this allowance shall begin as of the effective date of such reclassification and will continue as long as the employee remains in a PRODUCTION OCCUPATION LEVEL.

c. Such allowance shall be paid for all time paid for, including absences approved for payment.

23. In addition to the SSWT calculation method specified above, employees covered by the MFG-3 Agreement at the North Carolina Works received the following additional supplemental wage treatment:

"The supplemental wage treatment allowance calculated above shall be further increased by the amounts indicated below for those hourly production employees who

were in grades 34 and 38 immediately prior to such reclassification:

Former Production Grade Level	Additional Supplemental Wage Treatment Allowance To which Eligible
34	$ .27 per hour
38	$ .34 per hour

A copy of the North Carolina Works provision is attached and incorporated by reference designated Exhibit 6A.

24. Section D of Appendix A of the MFG-3 Agreement was titled "Special Hourly Payments." The provisions were identical and applicable to all locations, the only differences being addition or elimination of pertinent former grade levels which appeared at each locations and specification of amounts varying from $.73 per hour to $2.15 per hour. A copy of the Kansas City Works provisions is attached and incorporated by reference designated Exhibit "7A". A copy of the North Carolina provision is attached and incorporated by reference designated Exhibit "7B". A copy of the Phoenix Works provisions is attached and

incorporated by reference designated Exhibit "7C". They read:

> "Employees who are on the roll as of June 29, 1986, and who were classified as wage incentive employees as of June 28, 1986, will be eligible to [sic] the special hourly payments listed below based on the employee's grade level as of June 28, 1986.
>
> For purposes of this Section, "eligible employees" shall include any employees classified as Day Workers as of June 28, 1986, who, at any time during the three years proceeding such date, have occupied a position in which they received wage incentive payments.
>
> a. These special hourly payments shall begin as of June 29, 1986, and will continue as long as the employee remains in a PRODUCTION or TESTER OCCUPATION LEVEL.
>
> b. These special hourly payments shall be paid for all time paid for,

including absences approved for payment except for paid Excused Work Days and sickness absences which are not covered by the Sickness and Accident Disability Benefit Plan.

25. As a result of bargaining between CWA and AT&T during the 1986 negotiations, those qualifying employees who were on the roll as of June 29, 1986, were eligible to receive and thereafter received, both SSWT and SliP payments at their respective work locations. This included all plaintiffs. All plaintiffs continued to receive both the "plugs" to which they became entitled by virtue of the 1986 negotiations up to the time they were transferred to the Columbus Plant.

THE NORTH CAROLINA WORKS PLANT CLOSURE

26. On January 20, 1988, AT&T issued a closing notice to the employees of the North Carolina Works ("NCW") including the North Carolina Plaintiffs. A copy is attached as Exhibit "8" and incorporated by reference. The notice did not specify that employees who bid

for jobs at other locations would lose either SSWT or SHP.

27. At the time the closing notice was issued, the employees at NCW were represented by CWA Local 3060, whose President was Eddie Hubbard. Because of the concern of local union officers over the "portability" of the SHP to new locations, Hubbard and other main officers of Local 3060 traveled to Las Vegas in late January, 1988, to meet with AT&T and national CWA officials who were already gathered for a meeting there. These local union officers met with CWA National Representative Ron Allen and others from the CWA national office, and J.J. Dowdall and others from AT&T's national labor relations office, on January 28, 1988, to discuss this issue. At that meeting Dowdall stated that AT&T would not permit NCW employees to take their eligibility for SHP with them, but Dowdall agreed to consider this proposal.

28. At a meeting at NCW in February, 1988, Allen and Dowdall agreed that the NCW employees could take their SHP with them. They left to be resolved whether the NCW transferees would take their NCW SHP with them or receive the SHP being paid at the receiving plant.

29. Later, Dowdall contacted Ron Allen and informed him that while he was

still committed to allowing the NCW transferees going to CWA represented plants to take their NCW SHP with them, the IBEW opposed NCW transferees receiving SHP at locations at which it represented unless the SHP were also paid to all currently represented IBEW employees.

30. On February 24, 1988, a joint memo from AT&T and CWA was distributed to all NCW employees explaining the operation of the FCP and job bid system. The memo stated:

> "5. Special hourly payments language to be developed upon conclusion of discussions at the national level between the union and the company" (emphasis supplied)

A copy is attached as Exhibit "9" and incorporated by reference.

31. At a meeting held at NCW in April or May, 1988, Dowdall advised Ron Allen that AT&T would not agree to pay a supplemental hourly payment to those employees transferring to facilities outside of the MFG-3 bargaining unit. Dowdall gave as his reason that the IBEW objected to the transferee's receipt of SHP payments, and that CWA could not

bargain for locations represented by IBEW. Local 3060 President Hubbard and Vice-President Bob Sparks were present. Allen confirmed that CWA could not, by law, bargain for employees at locations represented by IBEW. Hubbard and Sparks refused to accept this position, and continued to insist that NCW employees receive their NCW SHP at whatever location to which they were transferred, regardless of the identity of bargaining unit representative.

32. In June, 1988, CWA and AT&T entered into an agreement for payment of SHP to all NCW employees through the end of the 1986 NCW MFG-3 contract, including those who had transferred to an IBEW location. It was agreed between Ron Allen and J.J. Dowdall that all workers who transferred from NCW, including those who transferred to locations or job positions which did not provide for the SHP, would receive a one-time lump-sum payment predicated upon the employee's SHP rate immediately prior to his or her transfer date multiplied by the number of standard work hours from the time of transfer until May 27, 1989, together with a factor for overtime hours. A copy is attached and incorporated by reference designated Exhibit "10". This memorandum was signed by Local 3060 President

Hubbard and NCW Manager of Human Resources R.E. Bullock. The agreement was negotiated in view of AT&T's position that NCW transferees could not receive SHP at IBEW represented locations in view of IBEW refusal to agree, and because of concern by local union officials that AT&T might, despite contrary prior assurances, also refuse to provide SHP to NCW transferees even at CWA represented locations. In view of this agreement, NCW transferees ceased receiving SHP payments subsequent to May 27, 1989. However, Dowdall agreed that any NCW transferees would again receive SHP payments if CWA were successful in retaining SHP as the product of the upcoming 1989 negotiations. AT&T had previously announced its intent to eliminate all SHP payments to which it had agreed in the 1986 negotiations.

33. As a result of the 1989 negotiations which resulted in the MFG-4 Master Agreement, the CWA was successful in maintaining SHP and SSWT at all of the facilities at which these supplements had been paid under the 1986 contracts (except NCW, which had been closed). The eligibility and formula for both benefits was the same as that agreed upon as the result of the 1986 negotiations.

PLAINTIFFS TRANSFER TO COLUMBUS PLANT AND LOSE WAGE SUPPLEMENTS

34. Commencing in 1989 and up to the present, all of the plaintiffs transferred to the Columbus Plant. Immediately prior to their transfer, all Kansas City and Phoenix plaintiffs had been receiving SHP and SSWT as the product of the 1986 and 1989 CWA MFG-3 and MFG-4 contracts. All NCW plaintiffs had received SHP and SSWT, as the result of the 1986 CWA MEG-3 contract. Some North Carolina workers who later transferred to other locations received lump sum payments, but the North Carolina plaintiffs in this action never received any lump sum payments. The transfers of the North Carolina plaintiffs were accomplished under the terms of the EORS except one who transferred under FCP. The transfers of the Kansas City and Phoenix plaintiffs were accomplished under the terms of the ATS (AT&T Transfer System). Upon their transfer, AT&T ceased paying SSWT and SHP supplements to the plaintiffs for work performed at the Columbus Plant.

SUBSEQUENT BARGAINING HISTORY

35. Based upon the commitment made by Dowdall during the negotiations concerning the lump-sum SHP payment at NCW in June 1988, the CWA's retention of SHP and SSWT as the product of the 1989 national negotiations was supposed to have triggered resumption of SHP and SSWT for all of the NCW transferees who had relocated to other facilities. Subsequent to the conclusion of the 1989 negotiations, Dowdall contacted the IBEW to request that these payments also be permitted to resume at one (1) or more IBEW represented locations. IBEW refused unless all IBEW represented employees also received them.

36. After execution of the 1989 CWA MFG-4 contract, none of the NCW transferees initially received resumption of SHP or SSWT, even those who had transferred to CWA represented plants. Upon learning of this, Local 3060 President Eddie Hubbard submitted a grievance to the national CWA office on September 20, 1989, which, in turn, submitted it to AT&T. A copy is attached and incorporated by reference designated Exhibit "11". This grievance was initially resisted by Dowdall on behalf of AT&T, who claimed that the June 1988,

lump-sum payment was intended to end AT&T's obligation for SHP and SSWT for the employees who had transferred from NCW. Shortly thereafter, CWA and AT&T settled this grievance by providing that NCW employees who transferred to hourly production jobs at other CWA manufacturing locations would receive a lump-sum payment for SHP arrears approximating the payments due since the effective date of the 1989 contracts and a resumption of SHP at their new locations. A copy of AT&T's memo confirming settlement and directing payment is attached and incorporated herein as Exhibit "12". Subsequently, CWA and AT&T reached agreement on the formula for calculating the lump-sum amounts paid in lieu of retroactive adjustments for the period from May 28, 1989, through October 29, 1989. This was confirmed by memo from Corporate Labor Relations Official Frank Palavido dated October 31, 1989. A copy is attached and incorporated by reference designated Exhibit "13"

37. Since October 29, 1989, all NCW employees who transferred to other CWA represented plants have continued to receive SHP and/or SSWT at the plant to which they were transferred.

38. Subsequent to resolution of Hubbard's grievance, Dowdall contacted the IBEW to advise that CWA and AT&T had reached agreement to pay SHP to NCW employees transferred to plants represented by CWA and to further advise that AT&T wanted to do the same thing for those NCW employees who had transferred to one (1) or more IBEW represented locations. The IBEW objected to such "special" treatment and refused to agree.

39. At all times prior to this date IBEW has refused, and continues to refuse, to agree that SSWT and/or SHP payments may be made to employees who transferred to locations represented by IBEW affiliates, including the Columbus Plant, even though AT&T guaranteed such payments for the duration of their employment with AT&T in production occupation jobs, and even though all plaintiffs had received them prior to their transfer to the Columbus Plant at their former work locations.

AT&T'S ATTEMPT TO EVADE PAYMENTS

40. In early 1989, a group of employees transferred from the Kansas City Works to the company's facility at Phoenix, Arizona, under EORS. AT&T refused to continue SSWT and SHP payment

for those employees, claiming that EORS exclusively governed the terms of a transferee's employment at a receiving facility, and that the promises of AT&T during the 1986 negotiations were not portable to other locations to which an employee might be transferred. CWA grieved this refusal under its Phoenix contract with AT&T. In a decision rendered December 3, 1990, Arbitrator John F. Caraway rejected AT&T's contentions, sustained the grievance, and directed resumption of SHP and SSWT payments to the transferred employees, together with compensation for past losses. A copy is attached and incorporated by reference designated Exhibit "14".

41. As the result of the 1988 closing of the NCW, some of the employees were transferred to another CWA represented plant at Burlington, North Carolina. Unlike other locations, the Burlington facility was not covered by the MFG-3 agreement and the employees there had not received either SSWT or SHP as the result of the 1986 negotiations. AT&T refused to pay SHP and SSWT to the transferred employees, again claiming that these payments were not "portable", particularly to plants which were not covered by the MFG-3 (and later MFG-4)

Agreements. CWA grieved this refusal under its Burlington collective bargaining agreement. On May 24, 1993, Arbitrator P.J. Moore issued his decision which, again, rejected the company's contentions, sustained CWA's position, and directed resumption of SSWT and SHP to the transferred employees, together with compensation for past losses, finding that the Caraway decision had become a part of CWA and AT&T's bargaining history. A copy of this decision is not available at the time of filing this complaint; however, it is addressed in the Aiges decision discussed post.

42. In 1990, a group of employees transferred from AT&T's Burlington, North Carolina Plant to a newly-built facility known as the Eagle Plant located in Greensboro, North Carolina. All employees had been receiving SHP and SSWT at the Burlington Plant; however, AT&T refused to continue such payments upon their transfer to the Eagle Plant. The company contended, in substance, that the Eagle Plant was a new facility covered by a collective bargaining agreement whose bargaining history did not include provision of SHP or SSWT. It additionally contended that these payments were not portable, and that the

Caraway and Moore decisions did not apply in view of this history, or were erroneous. CWA grieved this refusal under the Eagle collective bargaining agreement. On January 18, 1994, Arbitrator Stanley L. Aiges rendered his decision directing the resumption of SHP and SSWT payments to the transferred employees and compensating them for past losses. A copy of this decision is attached and incorporated by reference designated Exhibit "15".

LACK OF CONTRACTUAL REMEDY FOR AT&T'S UNJUSTIFIED BREACH

43. All plaintiffs are beneficiaries of the agreement between CWA and AT&T which provides that they receive SSWT and/or SHP for the remainder of their employment with AT&T in accordance with the terms of the 1986 MFG-3 Agreement. Yet, because CWA cannot lawfully process grievances for employees at locations at which CWA does not have a collective bargaining agreement; and because IBEW has refused and continues to refuse to permit incorporation of SHP and SSWT provisions in favor of employees formerly represented by CWA into collective bargaining agreements at plants represented by IBEW local

affiliates, including the Columbus Plant, unless such provisions are made applicable to all IBEW represented employees; and because IBEW cannot lawfully or contractually process grievances which have their origin in collective bargaining agreements negotiated by CWA; the plaintiffs are without any contractual remedy which may be enforced by either their former or current collective bargaining representatives to address AT&T's breach of agreement.

44. At all times AT&T has breached the provisions of the MFG-3 agreement by failing to make the required SHP and/or SSWT payments to employees who have transferred to facilities who are not represented by CWA, including the Columbus Plant. This breach is insupportable, inexcusable and outrageous in view of the bargaining history between CWA and AT&T, including the Caraway, Aiges and Moore arbitration awards which have construed the parties' original intent for these agreements to require these payments to be made at other locations regardless of whether language providing for them appears in local contracts at such locations, and despite the provisions of the FCP and EORS.

45. AT&T's refusal to make the SHP and SSWT payments to the plaintiffs cannot be justified on the premise that individual contractual rights of the plaintiffs cannot supersede provisions of IBEW contracts or because AT&T required IBEW's permission to implement these payments because:

a) the agreements upon which plaintiffs predicate their claims were collectively bargained agreements rather than individual agreements extinguished by collective bargaining;

b) the clear and unambiguous language of the agreements provides for no extinguishment of the payments depending on work location; and

c) AT&T has, contrary to this promise, previously made payments to employees at CWA represented locations which were the product of agreements made on their behalf at IBEW represented locations from which they were

transferred, as explained below.

46. In 1984, workers from the closing IBEW represented Indianapolis Works transferred to the CWA represented NCW pursuant to FCP. An issue raised by these transferees was whether they would have to re-qualify to their new group average in order to participate in the group incentive payments (and therefore receive only their individual hourly rates until they so qualified) as required by the local CWA contract or whether their "once full balance-always full balance" status under their former IBEW contract came with them. J.J. Dowdall, AT&T's Chief Negotiator, wrote a memo on March 21, 1984, to the Labor Relations Sections at all of the AT&T manufacturing plants which directed them to treat any wage incentive FCP transferees as "once full balance-always full balance' employees and pay them the group rate, as opposed to their individual rate, notwithstanding contrary provisions in the local CWA contract. A copy is attached and incorporated by reference, designated Exhibit "16". This was done to fulfill oral promises made to the IBEW at the 1983 negotiations - - promises which do not appear in either

the FCP provision or the wage incentive provisions in any IBEW contract. This action was taken unilaterally by AT&T without securing permission from the CWA and despite contrary language in the CWA bargaining agreement.

47. Employees at the Columbus Plant are represented by IBEW Local 2020. Nothing in the collective bargaining agreement negotiated between Local 2020 and AT&T precludes payment of SHP and/or SSWT to the plaintiffs. To the contrary, the agreement contains a "management rights' clause which, in substance, permits the company full discretion in operating the facility and managing its employees except to the extent set forth in the agreement. A copy of the agreement between IBEW Local 2020 and AT&T for the Columbus Plant is attached and incorporated by reference, designated Exhibit "17". Further, at no time prior to the transfer of plaintiffs to the Columbus Plant, and while plaintiffs were represented by CWA, did CWA and AT&T enter into an agreement excusing AT&T from payment of SHP and/or SSWT if the plaintiffs were transferred to any specific work locations, including IBEW represented locations, and further including the Columbus Plant. Furthermore, at no time either prior or

subsequent to the transfer of plaintiffs to the Columbus Plant did IBEW and AT&T agree that AT&T would be exempted from making SHP and/or SSWT payments to the plaintiffs subsequent to their transfer, as the product of collective bargaining. Rather, IBEW has merely refused to agree that AT&T may make such payments under its collective bargaining agreements unless such payments were made to all other IBEW represented employees.

48. For these reasons, AT&T's refusal to make SHP and/or SSWT payments to the Plaintiffs is wholly unjustified in fact or in law, such refusal being unilateral, using as an excuse that IBEW refuses to permit such payments, thus intentionally vexing and harassing plaintiffs by deliberately depriving them of a collectively bargained benefit under pretextual circumstances amounting to FRAUD. AT&T induced plaintiffs to agree, through the bargaining process in 1986, to end their strike and to accept its bargaining proposal to CWA. Plaintiffs, and others represented by CWA who are similarly situated, would not have agreed had they known the companys future course of conduct. AT&T was aware at all times that it was impossible for plaintiffs to enforce these contractual rights through the collectively bargained grievance

process of either IBEW or CWA for the reasons set forth above; and it was highly unlikely that individual employees such as plaintiffs would have either sufficient sophistication or funding to enforce their rights through individual lawsuits.

49. Upon making a decision to transfer, many of the plaintiffs prepared budgets and made financial decisions expecting that the SHP and SSWT payments would continue upon their transfer to the Columbus Plant. When the SHP and SSWT payments did not continue, the plaintiffs experienced severe emotional distress, family lives were placed in turmoil, some were forced to seek professional counselling, and they experienced serious financial setbacks.

50. A number of the plaintiffs had family members who were ill and needed their support and assistance. As a result of AT&T's refusal to continue SHP and SSWT payments, these plaintiffs could not return to their homes in North Carolina and other locations to care for these family members. One plaintiff, because of the unexpected financial shortfall, was prevented from returning to her former home for the surgery of her grandchild. Another plaintiff could not afford to return to her former home for

the funeral of a lifelong friend. Another plaintiff had planned for years to adopt a little girl; but when AT&T stopped making SHP and SSWT payments, she was forced to abandon her plans for adoption.

51. The plaintiffs were justified in relying on the promises and representations of AT&T with regard to these lifetime SHP and SSWT payments. They each received a personal letter from the President-elect of AT&T R.E. Allen. Bargaining reports from their unions advised them that these were lifetime benefits. R.E. Allen's letter was reviewed and approved by their corporate legal staff and/or labor relations staff.

52. AT&T officials knew at the time of the R.E. Allen letter they were planning to close one or more facilities. AT&T officials knew there were two (2) labor unions representing AT&T employees. AT&T either intentionally or negligently misrepresented the terms and conditions related to these promised lifetime benefits.

53. AT&T made these promises regarding these lifetime benefits in an effort to end a twenty nine (29) day strike which was costing AT&T thousands and perhaps millions of dollars. AT&T obtained a tremendous financial benefit

by convincing the plaintiffs to believe in their promises of lifetime benefits and end the strike.

54. AT&T, after being put on notice by three (3) impartial arbitrators that these promised payments were, in fact, what they said they were via R.E. Allen's letter, lifetime benefits. AT&T is still refusing to pay the plaintiffs these payments.

55. AT&T, by taking an unconscionable and outrageous position of refusing to make these payments, has saved based upon estimated projections, in excess of seven million dollars ($7,000,000.00) in employee payroll costs while wrecking havoc on hundreds of employee families, causing untold emotional distress, pain and suffering for these victims of this calculated FRAUD.

56. The history of this dispute, the documentation, the three (3) arbitration awards, the fact that AT&T is one of the largest corporations in the world with a large corporate legal staff, a large labor relations staff, could afford and had access to expert private legal counsel, had knowledge that hundreds of these employees would fall into "no man's land" and would not get help from either the CWA or IBEW to

enforce their contractual rights, knew that a large number of these employees would probably not be able to engage private legal counsel to prosecute their breach of contract claims, indicate that AT&T's actions were purposeful, wilful, malicious and calculated to defraud the plaintiffs out of their compensation promised by AT&T's President-elect, other AT&T officials and guaranteed by contract. For these reasons, Plaintiffs seek an award of punitive damages, and attorney's fees for bringing this suit.

WHEREFORE, the Plaintiffs pray as follows:

a) That the Court enter judgment declaring that AT&T breached the MFG-3 agreement, and other agreements incorporated into this complaint, by failing to pay the SHP and/or SSWT amounts to the plaintiffs subsequent to their transfer to the Columbus Plant.

b) That the Court enter judgment declaring that AT&T is obligated to continue making SHP and/or SSWT payments to the plaintiffs until such time as their entitlement to these payments may be modified or abridged by the collective bargaining process at the Columbus Plant, or at such other location to which they may be hereinafter transferred.

c) That the Court enter Judgment awarding damages to the plaintiffs in the amount of their losses occasioned by the failure of AT&T to make the required SHP and/or SSWT payments consisting of 1) the amount of the improperly withheld payments; and 2) the amount of such implemental pension contributions lost to the plaintiffs as a result of the improperly withheld payments in a total aggregate amount estimated in excess of one million dollars ($1,000,000.00).

d) That the Court enter judgment awarding pre-judgment interest on the improperly withheld payments.

e) That the Court enter judgment declaring that AT&T is estopped from denying future SHP and/or SSWT payments to Plaintiffs for the remainder of their employment with AT&T in a production level occupation or, in the alternative, awarding damages to the plaintiffs in the amount of their projected future losses.

f) That the Court enter judgment awarding punitive damages to plaintiffs in an amount in excess of four million dollars ($4,000,000.00) but not less than their actual losses.

g) That the Court enter judgment awarding the cost of this action together with reasonable attorneys fees.

h) That the Court enter judgment awarding plaintiffs such other relief as may be appropriate.

Respectfully submitted,

RICHARD E. LORD & ASSOCIATES
Ohio Reg. No.0024377
7504 Slate Ridge Boulevard
Reynoldsburg, Ohio 43068
(614) 864-1117

BY: /s/ Richard E. Lord
Richard E. Lord
Attorney for Plaintiffs

JURY DEMAND

Plaintiffs demand trial by jury.

RICHARD E. LORD & ASSOCIATES
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7504 Slate Ridge Boulevard
Reynoldsburg, Ohio 43068
(614) 864-1117

BY: /s/ Richard E. Lord
Richard E. Lord
Attorney for Plaintiffs

APPENDIX G

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

ANSWER TO COMPLAINT

Sixth Circuit Case №. 96-4397
Filed May 12, 1995

Pages G-1 thru G-17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERTA ANDERSON, ET AL.
Plaintiffs,

-v-

Case No. C2-94-851
Judge George Smith
Magistrate Judge Abel

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, ET AL.
Defendants.

**Southern Dist.
of Ohio
Filed 5/12/95**

ANSWER OF DEFENDANT, AT&T

Defendant, AT&T (hereinafter "AT&T" or "Defendant") for its Answer to the Amended Complaint and Jury Demand of Plaintiff hereby states follows:

1. Defendant denies that this case is properly brought pursuant to 29 U.S.C. §185(a) - Section 301 of the Labor-Management Relations Act and further denies the Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1337.

2. Defendant is unable to admit or deny at this time the first sentence in paragraph 2 of the Complaint, accordingly it is denied. Except to admit that all Plaintiffs are presently employed in a production occupation level at the AT&T Network Systems Columbus Plant, Defendant denies the remainder of the second

sentence of this paragraph. Defendant is unable to admit or deny at this time the third sentence of paragraph 2 of the Complaint, accordingly it is denied.

3. Defendant admits the first sentence of the paragraph. Except to admit that previously all domestic manufacturing plants were known as Western Electric Company and that Western Electric Company was a part of AT&T, Defendant denies the second sentence of this paragraph. Defendant admits that AT&T Technologies, Inc. was a separate corporation wholly owned by AT&T and that at the current time a division of AT&T is AT&T Network Systems. Defendant denies the rest of the third sentence of this paragraph.

4. Defendant denies that "at all times" AT&T was a party to a collective bargaining agreement with the Communications Workers of America (hereinafter "CWA") and the International Brotherhood of Electrical Workers (hereinafter "IBEW") and their respective local union affiliates (hereinafter "Local Unions") but admits for the purposes of this suit that AT&T has entered into collective bargaining agreements with the CWA, or IBEW and/or Local Unions at various times. Defendant

admits the second sentence of this paragraph.

5. Paragraph 5 is admitted.

6. Defendant admits the first sentence of this paragraph. Defendant denies the second and third sentence of this paragraph.

7. Except to admit that Plaintiffs have been employees of Defendant at some time, Defendant is unable to admit or deny at this time the other allegations of the paragraph, accordingly it is denied.

8. Except to admit that the first sentence states Plaintiffs claims, it is denied . Defendant is unable to admit or deny at this time the allegations contained in the rest of this paragraph, accordingly they are denied.

9. Except to admit that at certain manufacturing locations there was a wage incentive program; that certain employees received wage incentives; that some employees were in wage incentive groups; that some Plaintiffs received wage incentives prior to 1986 and thereafter received a payment referred to as SHP, Defendant denies each and every other allegation in the paragraph.

10. Except to admit that about 1983 at all manufacturing locations the collective bargaining agreements

contained an Article called Facility Closing Program ("FCP"), Defendant denies the first sentence of this paragraph. Except as expressly admitted hereafter, Defendant is unable to admit or deny the balance of the paragraph, accordingly it is denied. Defendant admits that if a person transferred under the provisions of FCP, seniority rights at the new location were affected in accordance with the provisions of the FCP Article. Defendant admits to the last sentence of this paragraph.

11. Except to admit that the 1986 collective bargaining agreements between AT&T and the CWA/IBEW and/or their Local Unions contained a provision entitled Employment Opportunity Review System ("EORS"), Defendant denies the remaining allegations, Plaintiffs' interpretations, legal conclusions, and inferences contained in this paragraph.

12. Except to admit that an employee transferring to another manufacturing plant received the wages associated with the job to which he/she transferred at the new location, Defendant denies the allegations contained in the first sentence of this paragraph. Except to admit that around 1983 AT&T sought to eliminate wage incentives, Defendant denies the

remainder of the second sentence of this paragraph.

13. Defendant denies the first sentence of the paragraph. Except to admit that negotiations between the CWA, the IBEW and/or Local Unions of each has varied from time to time and that the wage incentive system continued as part of the collective bargaining agreement until 1984 at some locations but was removed at all locations as a result or the 1986 negotiations. Defendant denies the remaining allegations as well as Plaintiffs' multiple assertions as to the history of negotiations contained in this paragraph.

14. Except to admit that the collective bargaining agreements between the CWA, IBEW and/or their Local Unions in 1983 contained a Facility Closing Program, Defendant denies the remainder of this paragraph.

15. Defendant denies the first sentence of this paragraph. Defendant admits that it and the IBEW and its Local Unions reached agreements in or about May, 1986. Except to admit that Defendant sought, in 1986 negotiations with the CWA and its affiliate Local Unions at manufacturing locations where there was a wage incentive system, to consolidate grade levels and eliminate the wage

incentive system, if applicable, defendant denies the remainder of this paragraph.

16. Except to admit that the CWA and its Local Union affiliates and AT&T agreed to a special supplementary wage treatment ("SSWT") associated with the consolidation of the grade levels, which is set forth in the 1986 collective bargaining agreement, Defendant denies the remainder of this paragraph.

17. Except to admit that as a result of the 1986 negotiations between the CWA, its Local Union affiliates and AT&T, the wage incentive systems ceased to exist and that the 1986 Contract contained provisions for SSWT and SHP payments and that such provisions were contained in the Collective Bargaining Agreements covering the Kansas City Works, North Carolina Works and Phoenix Works locations and that said collective bargaining agreements are referred to as "MFG-3", and that the CWA and its Local Union affiliates went on strike before reaching said agreement, Defendant denies the remainder of this paragraph.

18. Except to admit that Exhibit 3 to the Complaint is a marked copy of the letter sent by Robert E. Allen, dated June 12, 1986, to employees of AT&T and that this paragraph quotes a portion of

said letter, Defendant denies the remainder of this paragraph.

19. Except to admit that prior to reaching agreement in 1986 on SHP, other discussions were held between the CWA and AT&T over the elimination of the wage incentive system, Defendant denies the remainder of this paragraph.

20. Except to admit that the strike called by the CWA ended, Defendant is without sufficient knowledge or information to admit or deny the remainder of this paragraph, accordingly it is denied.

21. Except to admit that Exhibit 4 to the Complaint appears to be a marked copy of a portion of CWA's final bargaining reports, 1986, and this paragraph quotes a portion of Exhibit 4, Defendant denies the remainder of this paragraph.

22. Except to admit that Exhibit 5 to the Complaint is a true copy of a portion of the Kansas City Workers Collective Bargaining Agreement and that this paragraph quotes a portion of Exhibit 5, Defendant denies the remainder of this paragraph.

23. Except to admit that Exhibit 6A to the Complaint is a true copy of a portion of the North Carolina Works Collective Bargaining Agreement and that

the paragraph quotes a portion of that Exhibit, Defendant denies the remainder of this paragraph.

24. Defendant denies this paragraph.

25. Defendant admits the first sentence of this paragraph. Defendant cannot admit or deny at this time the remainder of this paragraph, accordingly it is denied.

26. Except to admit that Exhibit 8 to the Complaint is a true copy of a notice, dated January 20, 1988, announcing plans to close the North Carolina Works, Defendant denies the remainder of this paragraph.

27. Defendant admits the first sentence of this paragraph. Defendant is without sufficient knowledge or information to admit or deny the remainder of this paragraph, accordingly it is denied except to admit that J.J. Dowdall stated, in or around January, 1988 that NCW employees were not eligible to SHP once they left NCW but he would consider it.

28. This paragraph is denied.

29. Except to admit that J.J. Dowdall informed Ron Allen that the IBEW would not consent to former CWA-represented employees transferred to a location represented by it to receive SHP

payments, Defendant denies the remainder of this paragraph.

30. Except to admit that Exhibit 9 to the Complaint is a true reflection of a memo dated February 24, 1988 issued by E.P. Hubbard, President of Local 3060, CWA and R.E. Bullick, Manager, Human Resources to employees at the NCW and the paragraph cites a portion of Exhibit 9, Defendant denies the remaining allegations and inferences contained in this paragraph.

31. Defendant denies the first sentence of this paragraph. Defendant is without sufficient information or knowledge to admit or deny the remainder of this paragraph, accordingly, it is denied, except to admit that J.J. Dowdall at various times informed Ron Allen and others within the CWA that IBEW would not consent to employees formerly represented by the CWA to receive SHP once transferred to an IBEW location where IBEW-represented employees had no such payments under the Collective Bargaining Agreement.

32. Except to admit that Exhibit 10 to the Complaint appears to be part of an understanding reached between the CWA and AT&T, dated June 23, 1988, covering employees represented by Local 3060, NCW and that said understanding sets forth

the terms of the lump sum buy-out of SHP and other items for employees transferred from NCW, Defendant denies the remainder of this paragraph insofar as it purports to state the motive of Defendant in agreeing to said understanding. Defendant admits that all NCW employees entitled to the lump sum payment received said payment and that some received said payment after they had transferred.

33. This paragraph is admitted.

34. This paragraph cannot be admitted or denied at this time and, accordingly, it is denied.

35. This paragraph is denied except to admit that discussions concerning SHP and SSWT continued after the 1989 negotiations.

36. Except to admit that Exhibit 11 to the Complaint is a true copy of the grievance field by Ms. Hubbard, President Local 3060, CWA and that Exhibit 12 to the Complaint is a true copy of part of a letter dated October 16, 1989 and that Exhibit 13 to the Complaint is a true copy of part of a letter dated October 31, 1989 and that the CWA and AT&T resolved fully and finally all disputes associated with employees covered by MFG-3 and MFG-4, NCW as reflected in the full documents, part of which are attached to the Complaint as Exhibits 11, 12 and 13,

Defendant denies the remaining allegations, inferences and conclusions set forth in this paragraph.

37. This paragraph is admitted.

38. Except to admit that J.J. Dowdall had discussions with the IBEW on NCW transferred employees and SHP and that the IBEW maintained a position that employees transferred to IBEW locations were governed by the IBEW Contract and that under the terms of those Contracts there was no provision for SHP, Defendant denies the remainder of this paragraph.

39. Defendant admits to the paragraph except that part that purports to allege what AT&T guaranteed.

40. This paragraph is admitted.

41. Except to admit that this paragraph paraphrases the facts and arguments made before Arbitrator Moore and his opinion and award, Defendant denies the conclusions set forth in this paragraph and will rely upon the transcript, briefs and opinion and award.

42. Except to admit that Exhibit 15 to the Complaint is a true copy of Arbitrator Stanley L. Aiges' Opinion and Award, and that this paragraph paraphrases the facts and arguments made, Defendant denies the remaining allegations, conclusions set forth in

this paragraph and will rely upon the transcript and briefs.

43. Except to admit that Plaintiffs are without any contractual remedy which may be enforced by either their former or current collective bargaining representatives, Defendant denies the remaining allegations, conclusions and legal arguments of this paragraph.

44. This paragraph is denied.

45. This paragraph sets forth legal arguments and conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, this paragraph is denied.

46. Except to admit that Exhibit 16 appears to be a part of a document dated March 21, 1994 from J.J. Dowdall, which speaks for itself, Defendant is without sufficient information and knowledge to admit or deny the remainder of this paragraph, accordingly, it is denied.

47. Except to admit that employees at the Columbus Plant are represented by IBEW Local 2020 and that the Collective Bargaining Agreement covering the Columbus Plant has no provision dealing with SHP/SSW payments and that said contract contains a management rights article and Exhibit 17 is a true copy of the current Collective Bargaining

Agreement, Defendant denies the remainder of this paragraph.

48. Except to admit that Plaintiffs have no rights under the collective bargaining agreements of either the IBEW or CWA, this paragraph contains argument to which no responsive pleading is required. To the extent a responsive pleading is required, Defendant denies the allegations contained in this paragraph.

49. Defendant is without sufficient information to form a conclusion as to the allegations regarding the Plaintiffs and, therefore, denies them. Defendant denies all the allegations contained in this paragraph.

50. Defendant is without sufficient information to form a conclusion as to the allegations regarding the Plaintiffs and, therefore, denies them. Defendant denies all the allegations contained in this paragraph.

51. Defendant denies the allegations contained in this paragraph.

52. Defendant denies the allegations contained in this paragraph except that Defendant knew there were different Labor Unions representing employees at its plants.

53. Defendant denies the allegations contained in this paragraph.

This paragraph contains argument to which no responsive pleading is required, therefore, it is denied.

54. Defendant denies the allegations contained in this paragraph.

55. Defendant denies the allegations contained in this paragraph. This paragraph contains argument to which no responsive pleading is required.

56. Defendant denies the allegations contained in this paragraph. This paragraph contains argument to which no responsive pleading is required.

57. Defendant denies all allegations in the Complaint that are not expressly admitted.

Defendant denies that Plaintiffs are entitled to the relief sought or to a trial by jury.

WHEREFORE, Defendant prays that this Complaint be dismissed and Defendant awarded its costs, including reasonable attorney fees, and/or such other relief as this Court may deem appropriate.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege that they have exhausted the grievance and arbitration provisions of the collective bargaining agreement.

THIRD AFFIRMATIVE DEFENSE

This action is barred, in whole or in part, by the statute of limitations, Section 10(b).

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from now claiming that Defendant has violated their rights under the applicable collective bargaining agreement between Defendant and IBEW, Local 2020 or have waived their right to now seek such relief.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from now claiming that Defendant has violated their rights under the applicable collective bargaining agreement between Defendant and CWA, Local 2020 or have waived their right to now seek such relief.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege that either the IBEW or CWA have failed to represent them.

SEVENTH AFFIRMATIVE DEFENSE

As to those plaintiffs identified as transferring from North Carolina, there was an accord and satisfaction as to their claims.

Respectfully submitted,

/s/ Stuart M. Gordon
Stuart M. Gordon (0024450)
Trial Counsel for Defendant, AT&T
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41 South High Street, 32nd Floor
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Of Counsel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **ANSWER OF DEFENDANT, AT&T** has been served upon Richard E. Lord, Richard E. Lord & Associates, 7504 Slate Ridge Boulevard, Reynoldsburg, Ohio 43068, counsel for Plaintiffs, and upon James E. Irvine for the Communications Workers of America, 501 Third Street, N.W, Washington, D.C. 20001, and upon Dean B. Schulman, Statutory Agent for International Brotherhood of Electrical Workers and for IBEW, Local 2020, at 575 S. Third Street, Columbus, Ohio 43215, by U.S. Mail delivery, postage prepaid, on this 12th day of May, 1995.

/s/ Stuart M. Gordon
Stuart M. Gordon

APPENDIX H

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO AT&T BRIEF REGARDING
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed March 29, 1996

EX. 3 EXCERPT OF 1986 COLLECTIVE
BARGAINING AGREEMENT BETWEEN
CWA AND AT&T

Pages H-1 thru H-14

Exhibit 3- Excerpt of 1986 Collective Bargaining Agreement Between CWA and AT&T

ARTICLE 7

4. The COMPANY will give blanket advance approval for the posting of the following:
   Notice of meetings of the UNION or LOCAL UNION, and the reasons therefore;
   Nominations and election notice;
   Results of UNION or LOCAL UNION elections;
   Official reports and records relating to the operation of the UNION or LOCAL UNION;
   Notices of recreational and social affairs of the UNION or LOCAL UNION.
5. Nothing inflammatory, derogatory, controversial or disruptive to good relations shall be contained in material posted on the bulletin boards.
6. The LOCAL UNION assumes responsibility for the complete compliance with the above provisions, and the COMPANY may, in the event of violation, withdraw the privilege as the say or all bulletin boards and remove same on one (1) week's written notice to the LOCAL UNION. The LOCAL UNION may

discontinue the exercise of the privilege on one (1) week's written notice to the COMPANY.

ARTICLE 8
NONDISCRIMINATION

1. There shall be no discrimination on the part of the COMPANY or the UNION, or its officers, members, representatives or agents, against any employee because of membership or nonmembership in the UNION.
2. No employee shall be subjected to prejudice or discrimination because of action taken by representatives of the UNION in presenting grievances instituted for such employee under the provisions of this Agreement.
3. Neither the UNION, nor its officers, members, representatives or agents, will intimidate or coerce employees into joining or continuing their membership in the UNION.
4. In a desire to restate their respective policies, neither the COMPANY nor the UNION shall unlawfully discriminate against any employee because of such employee's race, color, religion, sex, age, or national origin, or because he or

she is handicapped, a disabled veterans or a veteran of the Vietnam era.

ARTICLE 9
CONDUCTING UNION OR LOCAL UNION BUSINESS ON COMPANY PREMISES

1. Neither the UNION, LOCAL UNION nor any employee shall solicit UNION membership on COMPANY premises during the assigned working time of the employees involved in the solicitation, nor shall any other UNION or LOCAL UNION business be conducted on COMPANY premises except:

   (a) Collective bargaining or conferring with COMPANY representatives, or the observation of a manufacturing operation or condition related to a specific grievance when such observation can properly be conducted only during the working time of the employees involved, in which case observation shall be limited to the STANDARD WEEKLY WORK SCHEDULE of the employees involved.

(b) The distribution of UNION or LOCAL UNION materials such as but not limited to papers, leaflets, handbills or literature may be made by the UNION or LOCAL UNION or an employee, provided such distribution is not made in working areas (as designated by the COMPANY) or during the assigned working time of the employees involved, and provided such distribution does not interfere with work operations or provoke disorder, or result in littering of the premises.

ARTICLE 10
GRIEVANCE PROCEDURE

1. To provide for the expeditious and mutually satisfactory settlement of grievances arising with respect to wages, hours of work and other conditions of employment, the procedures hereinafter set forth shall be followed.
2. Any individual employee or group of employees shall have the right at any time to present matters in their own interest to the COMPANY and to

have such matters adjusted without the intervention of the LOCAL UNION or UNION, as long as the adjustment is not inconsistent with this Agreement and provided that the LOCAL UNION or UNION has been given the opportunity to present at such adjustment.

3. When an employee or group of employees wishes to have a grievance presented for settlement by the LOCAL UNION, such grievance shall, except as otherwise provided in this or any other written agreement between the COMPANY and the UNION, be presented as outlined below and settlement sought at any one of the steps indicated.

4. Grievances which can be settled informally between a LOCAL UNION REPRESENTATIVE and a Section Chief (Step 1) or between not more than two (2) LOCAL UNION REPRESENTATIVES and a Department Chief (Step 2) or between not more than two (2) LOCAL UNION REPRESENTATIVES and an Assistant Manager (Step 3) may be processed without formal written procedure. Grievances so presented shall be answered within two (2) standard working days at Step 1, within two (2) standard working days

at Sept 2, and within five (5) standard working days at Step 3 following the date of presentation by the LOCAL UNION.

WRITTEN OR FORMAL PROCEDURE

5. If a satisfactory settlement cannot be reached informally at Step 1, Step 2, or Step 3 and the LOCAL UNION wishes to process the grievance further, the grievance shall be presented in writing at each step to the level of supervision indicated below:

Step (4)

Discussion at:

Manager Level or in a Joint Production Occupation Level Grievance Committee* or a Joint Safety Grievance Committee*

Representing the Union:

No more than three (3) LOCAL UNION REPRESENTATIVES

* Grievances involving a Production Occupation Description or an Unresolved safety grievance shall be submitted in writing directly to the appropriate committee without Steps (1) to (3).

Step (5)

Discussion at:

Grievances not satisfactorily settled in accordance with the foregoing procedures may be presented in writing

to the COMPANY'S local Bargaining Agent by the UNION'S local Bargaining Agent.

Representing the Union:
In such event, not more than three (3) representatives of either party shall ordinarily participate in a discussion of a grievance. A UNION REPRESENTATIVE may participate as one of the three (3) LOCAL UNION REPRESENTATIVES at Step 4 and Step 5.

EXPEDITED PROCEDURE

Grievances involving SUSPENSIONS OR TERMINATIONS OF EMPLOYMENT (RELIEVED, DROPPED OR DISCHARGED) shall be presented in writing at each step to the levels of supervision indicated below:
Step (1)
Discussion at:
Section Chief Level
Representing the UNION:
Not more than two (2) LOCAL UNION REPRESENTATIVES
Step (2-4)
Discussion at:
Department Chief, Assistant Manager and Manager levels (Combined)
Representing the UNION:
Not more than three (3) LOCAL UNION REPRESENTATIVES
Step (5)
Discussion at:

Grievances not satisfactorily settled in accordance with the foregoing procedures may be presented in writing to the COMPANY'S local Bargaining Agent by the UNION'S local Bargaining Agent. Representing the UNION:

In such event, not more than three (3) representatives of either party shall ordinarily participate in a discussion of a grievance. A UNION REPRESENTATIVE may participate as one of the three (3) LOCAL UNION REPRESENTATIVES at Step 2-4 and Step 5.

6. Grievances processed under the Written or Formal Procedure shall be answered by the COMPANY in writing at Step 4 within ten (10) standard working days following the date of presentation by the LOCAL UNION. Grievances presented at Step 5 shall be answered by the COMPANY within ten (10) standard working days following the conclusion of the discussion of such grievances.

7. Grievance processed under the Expedited Procedure shall be answered by the COMPANY in writing at Step 1 within two (2) standard working days, and at Step 2-4 within ten (10) standard working days following the date of presentation by the LOCAL UNION Grievances presented at Step 5 shall be answered by the COMPANY within then (10) standard working days following the conclusion of discussion of such grievances.

8. When the LOCAL UNION wishes to process a grievance to the next higher step, it shall present the grievance at the step within ten (10) standard working days following receipt of the COMPANY'S answer at the previous step. Otherwise, the grievance shall be considered closed. If the answer to a grievance is not given by the COMPANY within the time limits provided herein, the grievance may be presented at the next step.

9. When it is evident that the intervals specified in Paragraphs 4, 6, 7 and 8 above cannot be met, they may be extended as mutually agreed upon.

10. After a LOCAL UNION REPRESENTATIVE has referred a grievance to the COMPANY for adjustment, the COMPANY will not discuss the matter with the employee involved nor adjust the grievance pending settlement with the LOCAL UNION.

11. If following Step 1 of the grievance procedure both parties agree that it appears a question of interpretation and meaning of any provision of this Agreement is involved, such question may be discussed between the designated local Bargaining Agents of the COMPANY and the LOCAL UNION. The discussion of such interpretation shall not affect the obligatio to process the grievance in accordance with the other provisions of this Article.

12. Notwithstanding the provisions for presenting informal and formal grievances, the grievance, in an exceptional circumstance with the mutual agreement of the COMPANY'S local Bargaining Agent and the President of the LOCAL UNION, other than a grievance covered by the EXPEDITED PROCEDURE in Paragraph 5 above, may be presented at any step.

13. Where settlement is sought under the provisions of Paragraphs 5, 11 and 12, the grievances shall be presented in writing specifying the nature of such dispute and the reasons therefore, including reference to the specific provision of provisions of this Agreement in dispute.

14. An employee may review his or her own "Personnel Record" and upon his or her specific request such "Personnel Record" may be reviewed by the UNION REPRESENTATIVE or the LOCAL UNION REPRESENTATIVE.

ARTICLE 11
ARBITRATION

1. Any dispute arising between the UNION and the COMPANY with respect to the interpretation of any provision of this Agreement or the performance of any obligation hereunder may be referred, during the life of this Agreement or the performance of any obligation

hereunder may be referred, during the life of this Agreement, to an arbitrator in accordance with the procedure hereinafter set forth, provided:

(a) The procedure for the settlement of grievances, ARTICLE 10, GRIEVANCE PROCEDURE, has been exhausted, and

(b) Such dispute does not involve a provision of this Agreement which specifies that is not subject to arbitration and,

(c) Such dispute does not involve a case in which the determination of the matter is within the judgment or discretion of the COMPANY.

2. Either party may institute arbitration proceedings not later than sixty (60) days following the date of receipt of the final answer of either party in accordance with Paragraph (a) of this Article by written demand on the other party specifying the nature of such dispute and the reasons therefore, including reference to the specific provision or provisions of this Agreement in dispute.

3. Each referral to arbitration shall embrace but one (1) such matter in dispute and shall be limited to one COMPANY location, unless otherwise stipulated by agreement between the UNION and the COMPANY.

4. Within twenty (20) days following receipt of such written demand, the UNION and the COMPANY shall endeavor jointly to select an arbitrator. If, within such period, the parties are unable to agree upon the selection of an arbitrator, either party may request the Federal Mediation and Conciliation Service to submit a list of nine (9) arbitrators from which the parties may jointly make such selection. If the parties fail to agree on the selection of an arbitrator from this list, each party shall alternately strike one (1) name each until but one (1) name remains and the person so named shall be the arbitrator.

5. The UNION and the COMPANY shall each designate one (1) representative who together shall act as advisers to the arbitrator. The advisers in the arbitrator shall render such advice and assistance to the arbitrator as the arbitrator may request. The arbitrator may schedule and call such meetings of the advisers to the arbitrator as he or she may deem necessary to assist in hearing and adjudicating the dispute. However, such advisers to the arbitrator shall have no authority to vote on any ruling or decision concerning such dispute.

6. The arbitrator shall have no authority to:

   (a) Add to, or subtract from, or in any way modify the provisions of this Agreement.

   (b) Included in the award an obligation for the COMPANY to make any retroactive adjustment of pay, except as provided in ARTICLE 14, PRODUCTION OCCUPATION LEVEL PLAN, and ARTICLE 16, JOURNEYMAN TRADES PLAN of this Agreement between the parties, for any period in excess of six (6) months prior to the date arbitration proceedings were instituted in accordance with Paragraph 2 of this Article.

7. The decision of the arbitrator made in compliance with the foregoing shall be final, shall be in writing, shall include the reason for each finding and conclusion and shall be rendered within thirty (30) days following the date of the last hearing conducted by the arbitrator unless an extension of such period is agreed to by, the COMPANY and the UNION. The COMPANY and the UNION agree to abide by the arbitrator's decision.

8. Each party shall pay its own expenses incurred in the arbitration, including payment for time and expenses of its witnesses and its designated adviser to the arbitrator. All other direct expenses, including the fees and

expenses of the arbitrator, shall be done equally by the COMPANY and the UNION.

ARTICLE 12
WORK SCHEDULES

1. The UNION and the COMPANY recognize the necessity for work schedules involving two (2) or three (3) shift operations where the nature of the work or the needs of the business require them.
2. The COMPANY shall have the right to introduce new work schedules, to make changes in the starting and stopping times of STANDARD DAILY WORK SCHEDULES, including the starting and stopping time and length of lunch periods, and to vary from the STANDARD DAILY or WEEKLY WORK SCHEDULE.
3. The COMPANY shall notify the LOCAL UNION of new work schedules, or any change or variation in existing work schedules, at least one (1) week in advance of the effective date, except where emergency situations make it impractical to do so. Negotiations thereon shall take place when requested by the UNION and in the event of such negotiations, the new schedule, change or variation proposed by the COMPANY may be placed in effect pending agreement between parties.

APPENDIX I

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO AT&T BRIEF REGARDING
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed March 29, 1996

EX. 4 PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST TO ADMIT

Pages I-1 thru I-8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERTA ANDERSON, ET AL.
Plaintiffs,

-v-

Case No. C2-94-851
Judge George Smith
Magistrate Judge Abel

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, ET AL.
Defendants.

PLAINTIFFS TRANSFEREES FROM KANSAS CITY & PHOENIX. ARIZONA RESPONSES TO DEFENDANTS' FIRST REQUESTS FOR ADMISSIONS

REQUEST NO. 1 -

Admit that Plaintiff at the time this law suit was filed is no longer covered by a collective bargaining agreement between AT&T and Communications Workers of America (C.W.A.).

ANSWER: Plaintiffs deny the Defendants request for admission No. 1 to the extent that the "Special Supplementary Wage Treatment" (hereinafter "SSWT") and/or the Special Hourly Payment (hereinafter "SHP") were negotiated as lifetime or "evergreen" provisions contained in the 1986 Master Collective Bargaining Agreement with the Communications Workers of America

(hereinafter "C.W.A."). With regard to those benefits the Plaintiffs contend that they are still covered by the provisions of the C.W.A. Agreement of 1986 and are similar to vested pension benefits which are deemed to portable.

REQUEST NO. 2 -

Admit that Plaintiff, since transferring to the Columbus facility, is a member of the International Brotherhood of Electrical Workers, Local 2020 (I.B.E.W., Local 2000) and/or the I.B.E.W., Local 2020 is the exclusive statutory representative of Plaintiff since his/her transfer to the Columbus facility.

ANSWER: Plaintiffs admit that they are members of the International Brotherhood of Electrical Workers Local 2020 (I.B.E.W. Local 2000) and/or I.B.E.W. Local 2020 as their statutory representative since their transfer to the Columbus facility with regard to existing contractual provisions but are uncertain as to the exclusivity issue with regard to lifetime benefits negotiated in the 1986 Master Agreement with C.W.A..

REQUEST NO. 3 -

Admit that Plaintiff has no contractual remedy under any collective bargaining agreement, either with the C.W.A. or I.B.E.W., Local 2020, for the relief sought in this law suit.

ANSWER: Plaintiffs deny the Defendants' request for admission No. 3 in that they believe there is a contractual remedy for the lifetime benefits negotiated under the 1986 Master Agreement with C.W.A. which Plaintiff contends are similar in nature to pension benefits which can be enforced by the Federal Courts.

REQUEST NO. 4 -

Admit that AT&T and I.B.E.W., either at the local or national level, have not bargained a provision within any collective bargaining agreement or any supplement agreement or understanding, either verbal or in writing, that refers to or otherwise relates to the right of Plaintiff, to continue to receive SHP and/or SSWT payments when transferring from a location covered by a collective bargaining agreement between the C.W.A. and AT&T to a location covered by a collective bargaining agreement between the I.B.E.W. and AT&T.

ANSWER: Plaintiffs admit that to their knowledge, that AT&T and I.B.E.W. have not either at the local or national level, bargained a provision within any collective bargaining agreement or any supplement agreement or understanding, either verbal or in writing, that refers to or otherwise relates to the rights of Plaintiffs, to continue to receive SHP and/or SSWT payments when transferring from a location covered by a collective bargaining agreement between the C.W.A. and AT&T to a location covered by a collective bargaining agreement between the I.B.E.W. and AT&T. However, discovery is still pending, certain documents have been obtained by the Plaintiffs from the litigation in Oklahoma, but reserve the right to supplement this response upon completion of discovery with AT&T and obtaining relevant information and documents from C.W.A and I.B.E.W..

REQUEST NO. 5 -

Admit that Plaintiff does not allege in this law suit that either the C.W.A. or I.B.E.W. and/or its Local(s) have breached their (its) duty of fair representation.

ANSWER: Plaintiffs admit Defendants request for admission No. 5.

REQUEST NO. 6 -

Admit that C.W.A. Manufacturing locations and AT&T negotiated over but did not reach agreement on members of the C.W.A. Manufacturing locations or employees covered by a collective bargaining agreement between C.W.A. Manufacturing and AT&T upon transfer to another location represented by I.B.E.W., SHP/SSWT payments would continue to be paid.

ANSWER: Plaintiffs deny Defendants request for admission No. 6 to the extent that SHP and/or SSWT payments were negotiated as lifetime benefits as long as the employee remained in a manufacturing employment position with AT&T and further, that in each master contract, AT&T negotiated for and obtained a Reservation of Rights Management Clause.

REQUEST NO. 7 -

Admit that I.B.E.W., its locals and AT&T negotiated over but did not reach agreement on members of the C.W.A. Manufacturing locations or employees covered by a collective bargaining agreement between C.W.A. Manufacturing and AT&T upon transfer to an I.B.E.W. location would be entitled to SHP/SSWT payments once covered by a collective

bargaining agreement between AT&T and I.B.E.W. and/or its Locals.

ANSWER: Plaintiffs deny Defendants request for admission No. 7 to the extent that discussions were held between officials of I.B.E.W., its Local and AT&T but that no negotiations were conducted to the knowledge of the Plaintiffs. However, discovery is still pending and Plaintiffs reserve the right to supplement their response after completing discovery with Defendant AT&T and obtaining information and documents from I.B.E.W., its Locals and C.W.A. and its Locals.

REQUEST NO. 8 -

Admit that by law the C.W.A. has no statutory right to bargain for or on behalf of individuals covered by a collective bargaining agreement where the statutory representative is another union (I.B.E.W.).

ANSWER: The Plaintiffs admit Defendants request for Admission No. 8.

REQUEST NO. 9 -

Admit that Plaintiff, does not base their claims in this law suit on any alleged individual contract between AT&T and Plaintiff.

ANSWER: Plaintiffs admit the Defendants request for Admission No. 9 to the extent that the Master Agreement between AT&T and C.W.A. is not deemed to have created individual contracts between AT&T and Plaintiffs by virtue of the lifetime benefits provided for in this Master Agreement which could be deemed to be analogous to vested pension benefits.

Respectfully submitted,

RICHARD E. LORD & ASSOCIATES

/s/ Richard E. Lord
by: RICHARD E. LORD (LOR-06)
Ohio Reg. No.0024377
7504 Slate Ridge Boulevard
Reynoldsburg, Ohio 43068
(614) 864-1117

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served upon Stuart M. Gordon, Porter, Wright, Morris & Arthur, 41 S. High Street, 32nd Floor, Columbus, Ohio 43215, counsel for Defendants; and James D. Cutlip, Esq., AT&T Corporation, 1 Speedwell Avenue, Room 524, East Tower, Morristown, New Jersey 07962-1954; by regular U.S. Mail, postage prepaid, on this 13th day of April, 1995.

/s/ Richard E. Lord
RICHARD E. LORD

APPENDIX J

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO AT&T BRIEF REGARDING
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed March 29, 1996

Ex. 5 STATEMENT OF IBEW TO EMPLOYEES
REPRESENTED BY IBEW WHO TRANSFERRED
FROM A CWA LOCATION

Pages J-1 thru J-4

Exhibit 5 - Statement of IBEW to Employees represented by IBEW who transferred from a CWA location

June 2, 1992

Ms. Faye I. Tuttle
2373 N. Central Avenue
Apt #110-A
Kissimmee, FL 34741

Dear Sister Tuttle:

I recently received a letter from you and several other employees working for AT&T in Orlando, Florida, regarding your efforts to obtain from AT&T what the letter refers to as a "Special Hourly Rate." As I understand your complaint, it is that you have transferred to the AT&T facility in Orlando, which is covered by a collective bargaining agreement between AT&T and IBEW Local Union 2000, from another AT&T facility, which was covered by an agreement between AT&T and the CWA. That CWA agreement provided for a "special hourly payment" which employees at Orlando do not receive. In support of your claim to the special hourly payment, the letter refers to the 1986 manufacturing agreement

between AT&T and the CWA and an arbitration decision interpreting that agreement. The letter also asks me to "keep in mind that the 1986 contract was the product of a joint bargaining between CWA and IBEW."

As I assume you know, in March 1991 IBEW Local Union 2000 submitted a grievance seeking to obtain special hourly pay for those who had lost it as a result of their transfer to Orlando. In its response to that grievance, AT&T took the position that employees no longer covered by the CWA agreement were no longer entitled to the special hourly pay and that an IBEW Local Union had no right to enforce a CWA agreement. Accordingly, efforts to obtain the special hourly pay for you have been rebuffed by AT&T.

AT&T's argument, that an IBEW Local Union had no right to process a grievance seeking to obtain the special hourly pay, seems to me to be well-founded. Special hourly pay is a benefit created by the 1986 manufacturing agreement between AT&T and the CWA. Neither the IBEW nor any IBEW Local Union were parties to that agreement. Neither therefore would have any right the enforce any part of that agreement.

Incidentally, your statement, that the 1986 contract was the result of a

joint bargaining between the CWA and the IBEW, is incorrect. In 1986, each union bargained separately with AT&T. The first joint bargaining occurred in 1989.

I have reviewed the two documents referred to in your letter to support your current claim to special hourly pay. Neither, however, supports your claim. Appendix A to the 1986 CWA manufacturing agreement states that he special hourly payment "will continue as long as the employee remains in a PRODUCTION or TESTER OCCUPATION LEVEL." That language suggest to me that once one is no longer covered by the CWA agreement, and therefore no longer in a "PRODUCTION or TESTER OCCUPATION LEVEL," as that phrase is used in the CWA agreement, one is no longer entitled to the special hourly pay.

The arbitration case to which you refer involved the transfer of employees from one CWA represented location to another. In that case, both locations were covered by the CWA manufacturing agreement. The case therefore does not support the proposition that he or she transfers to a location that is not covered by that agreement. Moreover, in that case both AT&T and the CWA took that position that those who transferred to IBEW represented locations were not

entitled to receive the special hourly pay. Consequently, it would be difficult to convince an arbitrator that those who transferred should receive such pay.

Accordingly, it appears to me that Local 2000 has already done all that it reasonably could to attempt to obtain the special hourly pay for you and that further efforts on its part would be fruitless.

Best wishes.

Fraternally yours,
/s/ J.J. Barry
J.J. Barry
International President

JJB:ve
CC: H. W. Gurley, IVP
R. Gregory, President, LU 2000

APPENDIX K

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO AT&T BRIEF REGARDING
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed March 29, 1996

EX. 6 STATEMENT OF CWA TO EMPLOYEES
THEY FORMERLY REPRESENTED WHO TRANSFERRED
TO AN IBEW LOCATION

Pages K-1 thru K-14

Exhibit 6 - Statement of CWA to Employees they formerly represented who transferred to an IBEW location.

Communications Workers of America AFL-CIO, CLC

801 Third Street N.W. Washington, D.C. 20001-2797 202/434-1302

James E. Irvine, Vice President Communications and Technologies

JUST THE FAX

Date: 2-7

Number of Pages Not Including Cover Sheet 7

FAX Message To: Dick Covegory

FAX Number: 407-345-7276

FAX Message From: R.J. Allen

FAX No: 202-434-1308

Phone No: 202-434-1302

Type of Priority:

Urgent: _____

Normal: _____

Call for Pick Up: _____

Acknowledge Receipt: _____

COMMENTS: _____

_____

_____

Communications Workers of America AFL-CIO, CLC

801 Third Street N.W. Washington, D.C. 20001-2797 202/434-1302

James E. Irvine, Vice President Communications and Technologies

January 27, 1994

THIS LETTER WAS ADDRESSED TO FORMER KANSAS CITY EMPLOYEES WHO NOW WORK IN COLUMBUS

I have received your correspondence with questions concerning your eligibility to receive SHP payments, and your request for CWA to represent you in your efforts to resolve your dispute with AT&T on this subject.

The issue is concerning the portability of your Special Hourly Payments ("SHP"), when you transferred from a CWA represented location to a IBEW represented location. While this has become a very complicated issue, you must remember it is AT&T who made the unilateral decision not to continue to pay your "SHP" plug.

You have made several comments that are incorrect, and I will attempt to expand on them and than address the main questions contained in your correspondence:

1. You noted arbitrator Caraway said that "SHP" payments went with you for life, regardless of the location. That is not true, and arbitrator Caraway specifically limited his ruling to the Phoenix Works, which is why we had to arbitrate the issue a second time (and even a third time).
2. We have had several arbitration rulings where the arbitrator recited the statements made by the "Company and the Union" in bargaining, where the Union referred to retaining these payments for life, but in each case the arbitrator has simply ruled that the plugs indeed are portable to other "SHP" locations. The intent was for these payments to extend beyond the life of the Collective Bargaining Agreement.

3. At not time did CWA or any of its agents infer or indicate in any manner these payments were for life under any and all circumstances. We specifically advised these payments were only while you worked in certain job occupations and more importantly were only for employees covered under the CWA Collective Bargaining Agreement. It also was explained the IBEW did not want these type plugs at their factories and specifically made the decision, not to go out on strike to obtain them at their locations.

4. As I explained it is true IBEW did not negotiate the SHP agreement. I can also assure you that the Communications Workers of America DID NOT negotiate an SHP agreement with AT&T that transferred the plug to a plant represented by the IBEW. By law only the IBEW can do that.

5. I did give a affidavit in the Oklahoma City SHP litigation and am always willing to try

to assist brother's and sister's in the labor movement when I can. However, I did not testify then, nor could I now, that the agreement negotiated with AT&T in 1986 included a guarantee that the SHP payments would transfer to IBEW agreements. In reality I had to admit, and I acknowledged, I did not have the right to negotiate for these payments to be paid at the Oklahoma City Plant, because it is represented by the IBEW. That is probably a contributing factor to their loosing their case.

Now allow me to review the history of the "SHP" litigation. Our first encounter with is problem was when employees at the Kansas City Manufacturing Plant (Some of you belonged to that local) transferred to the Phoenix, Arizona plant. As you may recall we arbitrated this case, and while the arbitrator ruled in CWA's favor, he added the restriction that his ruling was for that specific case and location only. Regardless of our efforts he refused to grant the contract interpretation to any other AT&T location. We could not get

the arbitrator to rule for other locations that were covered by the same CWA contract, let alone other locations represented by a different Union and covered by a different Contract.

AT&T still refused to allow employees to transfer with their "SHP" plugs because of the arbitrators narrowly defined ruling. We were forced to pursue another case to arbitration to try and broaden the ruling to cover everyone represented by CWA. The second arbitrator also refused to give us an unconditional favorable ruling. He even placed certain restrictions on the "SHP" plug the first arbitrator did not include. The second arbitrator added there were circumstances when you could loose your plug, as you transferred from one CWA location to another, or even potentially without moving at all. This ruling said you loose your plugs if you quit or retire and then are rehired.

At first that doesn't sound too bad because most of the grievant's were not people who had quit or retired, they simply transferred without leaving the active payroll. However, some of these grievants actually were laid off and later rehired at another location. AT&T was interpreting the arbitrator's ruling as; you lose the plug if you leave the

active payroll, (by quitting, retiring or for any reason which was an attempt to expend this to layoffs as well). Their position meant you would lose the plug if you leave the active payroll for any reason.

After strenuous objections, from us, they finally moved off hat ridiculous interpretation, but they remained steadiest with the interpretation that if an employee transfers to any location which was not a CWA "SHP" location, (only those locations that were wage incentive locations prior to the 1986 CWA negotiations and were included in the "SHP" plug conversions as a result of the 1986 "SHP" agreement), then you do not take your plug with you.

We recently processed a third arbitration case on the portability of the "SHP" for employees transferring to one of the locations (the Eagle plant in North Carolina) which was not a "SHP" location. This location is a CWA represented location and it was the best case of the remaining cases. We felt we could win this case because it is a location that started up after the 1986 "SHP" agreement and during the local bargaining we advised the Company we were arbitrating the issue nationally and

whatever the arbitrator ruled would affect that location also.

We just recently received the arbitrator's ruling for the Eagle plant, and he ruled in our favor. Basically, he agreed with our argument that because in local bargaining we advised the Company we were awaiting the outcome of the arbitrator's ruling to see if the SHP plugs should be paid at that location and if the Company wanted the treatment to be different, then it was incumbent upon the Company to negotiate a change in the language to prevent the ruling from applying there (the language for the Eagle Plant was identical to the other locations because we got the Company to include the Eagle Plant into our National Contract).

We have one more location where the Company has refused to pay the SHP, and we are preparing to go forward to arbitration there if necessary. We are hopeful AT&T will review all the past cases we have arbitrated on this issue and not force us to arbitrate this last case. While this last case might be the toughest cased of all we still have the same argument there as the previous locations and that is, the contract language is the same at all locations represented by CWA.

This is where your case is the most difficult, if not an impossible case to win. First the "SHP" agreement is only in the CWA contract and is not contained anywhere in the IBEW contract, because they negotiated a different type wage incentive by-out. In fact, during the 1986 negotiations IBEW specifically decided not to pursue that type of agreement because it had the appearance of a two-tier wage agreement, and there certainly is some merit to their position.

It is my understanding some of the IBEW locals still object to the SHP payment as long as it is paid only to certain employees, and insist if any payments are to be considered at their locations the Company must pay everyone a plug at that location. When you consider their position in 1986 I can understand whey they are taking that position now. In these cases it is AT&T that is unwilling to concede.

We have been keeping the IBEW International updated on all our cases and will continue to do so. Even is we do prevail in our last case, in my opinion there is no way the IBEW (or anyone) could win anything in your case, in the arbitration procedure. If we win our last case, it will only be because we

have the "SHP" language in our contract, at all our locations, and we negotiated for the plug to be portable to all our locations. As provided by the National Labor Relations Act we could not and did not negotiate for the "SHP" language to be placed in any of the IBEW agreements or for the "SHP" to be portable to the IBEW agreements.

In summary, federal law prohibits the Communications Workers of America from representing you in any way, and because the provisions of our contract do not carry over into the IBEW contracts, I do not know how they could pursue this issue. Please do not misunderstand my comments because I cannot give you a position or response for the IBEW. You should discuss this with your local representative.

In response to your "DEMANDS" please be advised:

1. It is against the law for us to negotiate for you with AT&T. Only your elected representatives can do that.
2. It is not up to CWA to determine which demands and contract language are applicable for IBEW represented employees.

3. Again, CWA cannot negotiate with AT&T for terms and conditions covering plants represented by IBEW.
4. Again, CWA cannot negotiate with AT&T for terms and conditions covering plants represented by IBEW.
5. Again, CWA cannot negotiate with AT&T for terms and conditions covering plants represented by IBEW.

I'm not sure what your inference was in your closing comments, but let me assure you I not lied to you nor taken your plight lightly. Quite the contrary. I have answered questions similar to yours to many of the employees who transferred from a CWA location to a IBEW location and lost their plug. But, you cannot claim someone is lying to you simply because they do not give you the answer you want. I would love to tell you that you that I can forced AT&T to pay you the "SHP" payments but that simply is not a truthful answer.

It is my opinion there is no way you can succeed in your quest to have your SHP payment transferred. The basic problems with the merits of your case are straight-forward even if painful:

1. When the wage incentive plug was negotiated it was for CWA members only and the language was placed only in the CWA contracts.
2. At no time in the bargaining process in 1986 did CWA negotiate for the plugs to be portable to IBEW locations. All questions of portability were only for the CWA locations as RESTRICTED by law.
3. At no time did anyone from CWA, IBEW, or AT&T advise or explain to any member of the bargaining units that the "SHP" plug was transferable between the bargaining units of the different Unions.
4. The only place where the comment "FOR LIFE" was used was in the actual CWA/AT&T negotiations. It was referring to life in the bargaining unit as covered by the contract and RESTRICTED by law.
5. The only other comment concerning the longevity of these payments was made by Bob Allen, President elect of AT&T

where he stated in a newspaper article and letter to all employees of CWA, who were on strike that ....." these payments will be for as long as you are employed by AT&T"..... And, as argues in the arbitration hearing by the attorney for AT&T, he meant "for as long as you work for the Company <u>at that location"</u>.

I hope I have answered your questions, and given you the information necessary for you to understand the impossibility of CWA representing you in your attempts to have your SHP transferred.

As explained CWA <u>CANNOT</u> negotiate an agreement with AT&T to make the Plugs portable to different contracts and bargaining units represented by different Unions. Also in my opinion there is no way for your representative of the IBEW to even get this case into arbitration procedurally let alone win. Please understand I cannot and do not pretend to speak for the IBEW in this matter and it is my suggestion you discuss this with them.

The only way I know for you to receive the plugs would be for AT&T to do the right thing and agree with the IBEW to grant them to you. The problem is, I've

not seen anything from AT&T in recent years that would give me much hope that AT&T will ever voluntarily do the right thing.

As always I stand ready to help you and the IBEW in any way I can, but I honestly do not know of anything we can do to force AT&T to act as if they had a conscious.

In Unity,
/s/ Ronald J. Allen
Ronald J. Allen
Assistant to Vice President

cc: J.E. Irvine
R. Maly
M. Quinlan, IBEW
E. Kellar, President EM3 Council
L. Bush, President Local 2020

APPENDIX L

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO AT&T BRIEF REGARDING
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed March 29, 1996

EX. 8 ORDER OF U.S.D.C. FOR THE
MIDDLE DIST. OF FLORIDA - ORLANDO DIV.
IN CASE NO. 94-580-CIV-ORL-18
ADAMS VS. AT&T

Pages L-1 thru L-17

Exhibit 8 - Order of U.S.D.C. for the Middle Dist. of Florida Orlando Div. in *Adams vs. AT&T*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NORMA B. ADAMS. et al.,
Plaintiffs,

-v- CASE NO. 94-580-CIV-ORL-18

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

_____/

ORDER

This case as before the court on Defendant American Telephone and Telegraphs (AT&Ts) motion for summary judgment (Doc. 26) and Plaintiffs' motion for partial summary judgment (Doc. 30). Plaintiffs are employees of AT&T in Orlando who have been transferred here from other facilities around the country. Though all of these plaintiffs previously were represented by the Communications Workers of America (CWA) union, they are now represented by the International Brotherhood of Electrical Workers (IBEW). Plaintiffs filed this action seeking to

restore a wage supplement that was a part of their CWA contract and was allegedly intended to be a permanent addition to their benefits. AT&T contends that Plaintiffs have not met the requirements for bringing suit to enforce a provision of a collective bargaining agreement, and that collective bargaining agreement cannot be construed as providing a continuing benefit to Plaintiffs, who are now represented by another union. Plaintiffs filed their motion seeking to establish their right to enforce the provision. The court concludes that regardless of whether Plaintiffs are entitled to bring this action, the contract cannot provide a continuing benefit to Plaintiffs because they are exclusively represented by another union.

I. Facts

Plaintiffs are production level employees at AT&T's Orlando microelectronics plant. All have transferred to Orlando from three other AT&T production facilities in Kansas City, Merrimack Valley, and North Carolina, where they were represented by CWA and its local affiliates. While employed at these three locations Plaintiffs' terms of employment were

governed by collective bargaining agreements negotiated between CWA and AT&T. The agreement covering the years 1986-1989 is referred to as the MFG-3 Agreement. CWA and AT&T negotiated a new collective bargaining agreement in 1989 to replace the MFG-3 Agreement which is known as the MFG-4 Agreement.

In the 1986 collective bargaining agreement AT&T sought both to eliminate a wage incentive system that had been in place in previous agreements and to consolidate job grade levels. AT&T agreed to provide a "special supplementary wage treatment" (SSWT) to any production level employee whose regular pay was to be reduced through the consolidation of grade levels, in order to compensate for the difference. The parties agreed that these supplemental payments would continue for 'as long as the employee remains in a production occupation level."

With regard to the wage incentive system, AT&T sought to supplant the incentive program with either a one-time lump sum payment or a schedule of diminishing incentive payments over the three-year life of the collective bargaining agreement. The union rejected this proposal, asserting that the benefit that replaced the long-standing wage

incentive program should extend beyond the MFG-3 Agreement. AT&T and CWA agreed that AT&T would provide a supplemental hourly payment (SHP) to replace the program, and that this supplemental payment should be maintained in successive bargaining agreements. The MFG-3 Agreement provided, "These special hourly payments shall ... continue as long as the employee remains in a production or tester occupation level." Though AT&T consolidated job grade levels and eliminated the old wage incentive system in their collective bargaining agreements with IBEW, those agreements did not contain any provision for continuing SHPs or SSWTs.

AT&T and CWA also included these provisions in the MFG-4 Agreement ratified in 1989. Employees from the Merrimack Valley and Kansas City facilities received either the SHP or the SSWT or both from June 29, 1986 until they were transferred to the Orlando facility. Employees from these two plants transferred under AT&T's Employment Opportunities Review System, and all Plaintiffs transferred to the Orlando facility between July 23, 1987 and May 23, 1994.

Employees at the North Carolina facility received their supplemental

payments without incident until January 1988, when AT&T announced that it would be closing the plant. AT&T then contended that these employees, who were to be transferred under the Facility Closing Program Article, should not continue to receive their SHP and SSWT payments after they were transferred. CWA objected to AT&T's position, and the union and the employer entered into negotiations. As a result, on June 23, 1988, AT&T agreed to pay to all employees at the North Carolina plant who transferred to another location a lump sum payment to compensate for the loss of the supplemental payments. It is evident from the record that the agreement pertained to compensating these employees for the loss of these wage supplements through the period covered by the MFG-3 Agreement. The settlement provided that AT&T would make this lump sum payment to all employees who transferred from the North Carolina plant, regardless of whether they transferred to another facility represented by CWA or to a facility represented by IBEW.

None of the Plaintiffs who transferred from the North Carolina facility initially received either the SHP or the SSWT after ratification of the MFG-4 Agreement. CWA Local 3060, who

represented the North Carolina workers, filed a grievance on behalf of all transfers from that plant, alleging that they were still entitled to the wage supplements. CWA and AT&T settled the grievance by agreeing to resume payment under the SHP and the SSWT only to those employees who transferred from the North Carolina plant to other plants represented by CWA. CWA has arbitrated three disputes with AT&T over whether these wage supplements follow an employee when the employee is transferred from one facility represented by CWA to another facility represented by CWA. CWA has prevailed and maintained these payments in each arbitration.

Since their transfer to Orlando Plaintiffs have been represented by IBEW Local 2000. On at least three occasions AT&T has asked IBEW to permit resumption of the wage supplements to those employees who transferred from CWA facilities. IBEW has refused to allow these payments unless they are made to all employees at the plant IBEW contends that neither Plaintiffs nor anyone else transferring from a CWA location to an IBEW location are entitled to these payments since the collective bargaining agreement between IBEW and AT&T does not contain any provision for such payments.

Plaintiffs therefore filed this action against AT&T to require the company to resume the SHP and SSWT payments.

II. Legal Discussion

In their motions for summary judgment the parties focus on Plaintiffs' right to bring this action under section 301 of the Labor-Management Relations Act, 29 U.S.C. §185 (1994). AT&T argues that Plaintiffs do not have standing to bring this action under section 301, and that even if Plaintiffs had standing, they have not met the procedural requirements for filing suit in federal court. AT&T also contends that the collective bargaining agreement negotiated between CWA and AT&T does not support Plaintiffs' claim, because Plaintiffs are now exclusively represented by IBEW. In their motion for summary judgment Plaintiffs seek a determination that they may bring this action, because they are suing to enforce rights that are "uniquely personal" and therefore need not adhere to the standard legal requirements for actions brought under collective bargaining agreements.

A. Standard for Summary Judgment

Summary judgment is authorized if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.56(c); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248.

The moving party bears the burden of proving that no genuine issue of material fact exists. *Calotax Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining whether the moving party has satisfied the burden, the court considers all inferences drawn from the underlying

facts in a light most favorable to the party opposing the motion, and resolves all reasonable doubts against the moving party. *Anderson*, 477 U.S. at 255, *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* 475 U.S. 574, 587-88 (1986). The moving party may rely solely on his pleadings to satisfy this burden. *Celotex*, 477 U.S. at 323-24; Fed. R. Civ. P. 56(c).

"[A]ll that is required (to proceed to trial] is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties differing versions of the truth at trial." *Anderson*, 477 U.S. at 249 (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)). Summary judgment is mandated however, "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

B. Plaintiffs' Right to Sue under MFG-3

It is evident from the pleadings in this case that Plaintiffs and AT&T have very different perceptions of the nature of this case. Most of the parties' motions for summary judgment deal with

Plaintiffs' threshold right to bring this action. AT&T maintains that Plaintiffs' case is like all other suits arising out a collective bargaining agreements, and that Plaintiffs must meet certain procedural requirements before bringing this action under section 301. AT&T first asserts that Plaintiffs do not have standing to sue under the MFG-3 or MFG-4 Agreements, because they are no longer members of the bargaining units covered by those agreements. *See, e.g.*, *Sepulveda v. Pacific Maritime Ass'n*, 878 F.2d 1137 (9th Cir.), *cert. denied*, 493 U.S. 1002 (1989). AT&T next contends that Plaintiffs failed to exhaust their contractual arbitration remedies under the collective bargaining agreement, and therefore can only bring suit if they fall within two narrowly circumscribed exceptions. *See Vaca v. Sipes*, 386 U.S. 171 (1967); *Mason v. Continental Group, Inc.*, 763 F.2d 1219 (11th Cir. 1985), *cert. denied*, 474 U.S. 1087 (1986). If Plaintiffs cannot pursue these contractual remedies because they are no longer part of the bargaining unit, then they may not bring suit under section 301, even if it leaves Plaintiffs without any remedy.

The two exceptions to section 301's requirement that grievants under a

collective bargaining agreement must pursue the agreement's arbitration provisions are (1) that the union breached its duty of fair representation; and (2) the processing of the grievance under the agreement's provisions would have been futile. *See. e.g.. Vaca supra*, 371 U.S. at 184-86. Apparently assuming that Plaintiffs cannot establish that processing the grievance would be futile, AT&T determines that in order to bring its claim Plaintiffs must assert that CWA violated its duty of fair representation. Because Plaintiffs do not claim that CWA breached its duty, AT&T argues that Plaintiffs cannot bring its claim. Finally, despite the fact that Plaintiffs do not include CWA as a defendant, AT&T characterizes this case as a "hybrid" section 301/duty of fair representation claim, and states that the applicable statute of limitations is six months. *See DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983). AT&T therefore urges dismissal for failure to file within the statutory period.

Plaintiffs, on the other hand, contend that the MFG-3 collective bargaining agreement conferred personal "status" benefits on them independent of that particular agreement, and therefore they have the right to bring an

individual action under section 301 to recover those benefits. Plaintiffs contend that their status as transferees from the bargaining unit does not prohibit them from bringing suit under section 301, and that they are not required to include either CWA or IBEW as a defendant. Rather, they assert that because they are no longer members of the bargaining unit they need not pursue the arbitration procedures included in the collective bargaining agreement. Plaintiffs sought to pursue their grievance with CWA after they transferred, but were informed that CWA could no longer help them because they belonged to the IBEW. IBEW refused to aid them because they were seeking to enforce a CWA contract. Plaintiffs contend that the unions' responses establish the futility of attempting to arbitrate their grievance, and that they should be permitted to pursue this action in court. Plaintiffs dispute AT&T's contention that this is a hybrid claim, because they are suing neither CWA nor IBEW. Rather, Plaintiffs argue that this is a straightforward breach of contract claim and that the court should apply Florida's five-year statute of limitations for such actions. *See Fla. Stat. ch.* 95.11(2)(b) (1993).

AT&T essentially contends that because Plaintiffs did not pursue their remedies through their union, they should not be allowed to pursue their section 301 claim as individuals. Plaintiffs respond that they should be permitted to sue under section 301 precisely because neither union has the authority to resolve their grievance for them. The court concludes that federal labor law provides a simpler solution to the parties' dilemma that does not require resolving it. Regardless of whether Plaintiffs can bring this action under section 301's requirements, CWA had no authority to negotiate to provide benefits to Plaintiffs after they left CWA's bargaining unit. Under federal law,

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment

29 U.S.C. § 159(a) (1994). If the court were to require AT&T to make these wage supplement payments to Plaintiffs, Plaintiffs would receive the benefits of their CWA contract while being represented exclusively by IBEW in the Orlando facility. However, because IBEW is Plaintiffs' exclusive representative with regard to wages and other conditions of employment, the MFG-3 Agreement cannot apply to Plaintiffs as a matter of law. In other words, according to section 159(a), CWA can only contract to provide benefits to workers in its bargaining unit; once those workers leave for another bargaining unit represented by another union, they are no longer entitled to the benefits of a CWA-negotiated contract. *See Allied Chem. & Alkali Workers of Am. v. Pittsburgh Plate Glass Co.*, 404 U.S. 157. 181 n.20 (1971) (noting that a bargaining agent is under no statutory duty to represent non-members of a bargaining unit in negotiations with an employer).

Plaintiffs contend that the Supreme Court has long countenanced "status" benefits that continue beyond the life of a labor contract or an employee's active employment within a particular bargaining unit. In *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964), the

Supreme Court stated in dictum, "We see no reason why parties could not if they so chose agree to the accrual of rights during the term of an agreement and their realization after the agreement had expired." *Id.* at 555. Plaintiffs have referred to other courts which have used this language to justify benefits negotiated by unions for retirees who are no longer active participants in a bargaining unit. *See United Food and Commercial Workers Int'l Union v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985): *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984).

In those cases, however, the persons due to receive benefits were not part of any bargaining unit, and no other entity had become their exclusive bargaining representative. *In United Food & Commercial Workers Union v. Alpha Beta Co.*, 736 F.2d 1371 19th Cir. 1984), the court declared that unions may negotiate provisions that can be enforced even if an employee is transferred away from a bargaining unit. *Id.* at 1379. However, in that case the workers were transferred to a facility without a bargaining representative, and the provisions were challenged under 29 U.S.C. § 157 (1994), which defines employees' right to self-

organization. *Id.* *See also Courier-Citizen Co. v. Boston Electrotypers Union Number 11*, 702 F.2d 273, 277 (1st Cir. 1983) (denying claim that union attempted to represent non-unit employees by allowing them to retain benefits when they transferred to a facility not represented by another union under 29 U.S.C. §158(b)(3) (1994)). "Status" provisions designed to carry over to a bargaining unit represented by another union do, however, appear to violate 29 U.S.C. § 159(a).

The plain meaning of section 159(a) suggests that only one union can represent workers in a particular bargaining unit at a time. Because Plaintiffs have transferred to another facility where IBEW is their exclusive representative with regard to wages. Plaintiffs can no longer reap benefits negotiated by CWA with regard to their constituents. To do so would be to intrude on IBEW's exclusive authority to represent its workers. Accordingly, CWA's authority to negotiate wage supplements in 1986 extended only to those workers represented by CWA. When workers transfer to another facility represented by another union, CWA's authority to represent them ends and

those workers may not claim benefits under a CWA contract.

III. Conclusion

The court assumes for the purposes of this motion that Plaintiffs had the right ia bring suit under 29 U.S.C. § 179 (1994) to enforce the terms of the MFG-3 Agreement. The court concludes that Plaintiffs have no continuing right to claim benefits under the MFG-3 Agreement, because as members of an IBEW bargaining unit they are exclusively represented by IBEW. Plaintiffs' claim therefore is without merit as a matter of law. The court **GRANTS** Defendants' motion for summary judgment (Doc. 26). **DENIES** Plaintiffs' motion for partial summary judgment (Doc. 30), and instructs the clerk of the court to enter judgment accordingly.

It is **SO ORDERED** in Orlando, Florida, this 1st day of February 1996.

/s/ G. Kendall Sharp
G. KENDALL SHARP
United States District Judge

Copies to all counsel of record

APPENDIX M

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO MEMORANDUM IN OPPOSITION
BY PLAINTIFFS TO AT&T'S
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed May 3, 1996

EX. B LETTER FROM GARY A. SNYDER
TO RICHARD E. LORD, 4/8/94

Pages M-1 thru M-2

SNYDER, RAKAY & SPICER
ATTORNEYS AT LAW
SUITE 316 TALBOTT TOWER
DAYTON, OHIO 45402

GARY A. SNYDER
PETER J. RAKAY
JERRY A. SPICER

513/228-2856
FAX/513/228-5248

April 8, 1994

Richard E. Lord, Esq.
7504 State Ridge Boulevard
Reynoldsburg, OH 43068

Dear Mr. Lord:

This office represents I.B.E.W. Local 2020. In reply to your letter of March 15, 1994, addressed to Lorie Bush, President of Local 2020, be advised that this Local Union has always fully represented its members.

The grievances filed on behalf of your clients were processed and argued through the grievance procedure.

The Union could not have been successful arbitrating benefits which are not included in its collective bargaining agreement with AT&T; and, both C.W.A. and AT&T agree that their collective bargaining agreement did not permit your clients to carry with them the S.H.P. when they transferred to Columbus.

BEST AVAILABLE COPY

For the reasons set forth above, grievances numbered 90-105 and 91-136 have been withdrawn by the Union.

Your threatened lawsuit against Local 2020 has no merit whatsoever, as you must know. If you pursue it, we will vigorously defend the Local Union and will seek Rule 11 sanctions.

Very truly yours,
SNYDER, RAKAY & SPICER
/s/ Gary A. Snyder
Gary A. Snyder

GAS/ami
cc: Lorie Bush, President
G94/033

APPENDIX N

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO MEMORANDUM IN OPPOSITION
BY PLAINTIFFS TO AT&T'S
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed May 3, 1996

EX. C LETTER FROM ROBERT D. KURNICK
TO RICHARD E. LORD, 4/6/94

Pages N-1 thru N-4

LAW OFFICES
SHERMAN, DUNN, COHEN, LEIFER & YELLIG, P.C.
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STEPHEN COYE

LOUIS SHERMAN (RET.)
THOMAS X. DUNN
(1911-1991)

AREA CODE 202
785-9300

TELECOPIER
(202) 775-1950

April 6, 1994

Richard E. Lord, Esq.
7504 Slate Ridge Boulevard
Reynoldsburg, Ohio 43068

Dear Mr. Lord:

This office represents the International Brotherhood of Electrical Workers. I recently received a copy of your March 15, 1994 letter addressed to Lorie Bush, President of IBEW Local Union 2020. In that letter you accuse the IBEW of breaching its duty of fair representation by failing to obtain for your clients the Special Hourly Pay that they received before they transferred to the AT&T Plant in Columbus, Ohio, and you threaten to file a lawsuit if your

clients do not receive the "SHP." I am writing this letter in a sincere effort to dissuade you from embarking upon a course that will not only waste the resources of your clients and mine, but also violate the requirements of Rule 11 of the Federal Rules of Civil Procedure and expose you and your clients to sanctions.

First, there is no offer to pay the SHP to transferees in Columbus, Ohio. As you note in your letter, AT&Ts position is, and has been, that those who have transferred out of the CWA bargaining unit are not entitled to receive the SHP after they transfer. In view of the fact that both the CWA and AT&T agree that the collective bargaining agreement under which your clients were working before they transferred to Columbus, Ohio did not permit them to carry the SHP with them to Columbus, it is difficult to understand how AT&T could be convinced to pay the SHP to the transferees that you represent.

Second, the issues that you raise in your letter are based on events that transpired in the 1980's. Those issues were litigated, on the public record, in the lawsuit alluded to in your letter. That lawsuit was filed in 1989 and was dismissed more than a year ago. Even in

that suit the claim against the IBEW was untimely, although the court did not address that issue before dismissing that case. I am sure that you appreciate that the six month statute of limitations applicable to fair representation suits precludes you from litigating those issues again. And, I assume that you appreciate the fact that you cannot avoid application of the statute of limitations by threatening to treat a failure to respond to your letter as a "fresh breach." See Ratkoskv v. UTU, 843 F.2d 869 (6th Cir. 1988)

Third, you should know that the IBEW International is not the recognized or certified bargaining representative of AT&T manufacturing employees nor a party to the collective bargaining agreements under which they work. Those employees are represented by IBEW local unions. A union that is not the bargaining representative does not owe a duty of fair representation, and as one court has observed, "international unions are routinely dismissed from duty of fair representation suits when they are neither the recognized collective bargaining representative nor a party to the contract." Bore v. Greyhound Lines, Inc., 116 LRRM 3315, 3317 (N.D. Cal. 1984). In that case, the court imposed

Rule 11 sanctions on an attorney who filed a fair representation case against an international union that did not owe a duty of fair representation.

For these reasons, and many others, your threatened lawsuit against the IBEW would be nonmeritorious. I hope that it will not be filed. If it is filed, we will defend it vigorously and, upon dismissal, seek sanctions. Please feel free to contact me if you have any questions.

Sincerely,

SHERMAN, DUNN, COHEN, LEIFER & YELLIG, P.C.

/s/ Robert D. Kurnick

By: Robert D. Kurnick

APPENDIX O

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

EXHIBITS TO MEMORANDUM IN OPPOSITION
BY PLAINTIFFS TO AT&T'S
MOTION FOR SUMMARY JUDGMENT

Sixth Circuit Case №. 96-4397
Filed May 3, 1996

EX. D LETTER FROM GERALD C. BOYLE
TO RICHARD E. LORD, 4/13/94

Pages O-1 thru O-3

Communications Workers of America AFL-CIO, CLC
501 Third Street N.W.
Washington, D.C. 20001-2797
202/434-1234 Fax202/434-1219
Legal Department

Via Overnight Mail
April 13, 1994

Richard E. Lord, Esq.
7504 Slate Ridge Boulevard
Reynoldsburg, Ohio 43068

Dear Mr. Lord:

This will serve to introduce the undersigned as the attorney for the Communications Workers of America. Direct all future correspondence to my attention.

Apparently Mr. Allen's thorough and thoughtful attempt to explain the "plug" or "SHP" matter as it relates to the CWA contracts has been futile. Your clients refuse to understand the legal limits of CWA's representational authority and the National Labor Relations Act. The Communications Workers of America has no authority to negotiate provisions of agreements for bargaining units represented by the International Brotherhood of Electrical Workers.

Your intemperate remarks about doing the morally and legally correct thing are ill-advised. You and your clients know that it is the IBEW and AT&T that are the sole source of relief. The Communications Workers of America has no role in and seeks no role in negotiating the terms and conditions of employment for those individuals who are 'exclusively represented" under the National Labor Relations Act by the International Brotherhood of Electrical Workers. When the plug was originally negotiated it did not apply to IBEW locations and nothing CWA ever did suggested that it was bargaining for anyone other than those individuals in CWA represented units. My client has gone the extra mile and has done all that it can in regard to the plug issue for your clients.

Your thinly veiled threat to seek out the U.S. Attorney to allege a R.I.C.O. violation unless your clients' demands are met borders on the unethical. My client suggests that it is your duty as an officer of the court to turn over such "evidence" to the proper authorities immediately. My client conducts itself in a lawful and ethical manner and fears no scrutiny from any source. To the extent you have such "evidence" and have

not yet turned it over suggests that you are using such threats to obtain a bargaining advantage. I refer you to Disciplinary Rule 7-105 for a refresher on this issue.

I implore you to rethink any lawsuit alleging a breach of the duty of fair representation against CWA should it refuse to negotiate with AT&T for your clients who are represented by another union. The duty of fair representation extends only to those individuals in the bargaining unit which CWA represents. Your clients are represented by another labor organization. Such claims would be patently frivolous and would be subject to Rule 11 sanctions.

The CWA has done all that it can. The letter writing campaign is now concluded.

Sincerely,
/s/ Gerard C. Boyle
Gerard C. Boyle

GCB:pro
cc: R. Allen

APPENDIX P

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

STATUTE

LABOR MANAGEMENT RELATIONS ACT; 61:
STAT. 156, 29 U.S.C. SEC. 185(A)
SECTION 301(A)

Pages P-1 thru P-1

Labor Management Relations Act; 61: Stat. 156, 29 U.S.C. Sec.185(a); Section 301(a):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX Q

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

STATUTE

LABOR MANAGEMENT RELATIONS ACT; 65: STAT. 601, 29 U.S.C. SEC. 159(A)
SECTION 9(A)

Pages Q-1 thru Q-2

Labor Management Relations Act; 65: Stat. 601, 29 U.S.C. Sec.159(a); Section 9(a):

(a) Exclusive representatives; employees' adjustment of grievances directly with employer.

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective-bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in

effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

APPENDIX R

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF OHIO

STATUTE

NATIONAL LABOR RELATIONS ACT;
29 U.S.C. SEC. 160(B)
SECTION 10(B)

National Labor Relations Act;
29 U.S.C. Section 160(b);
Section 10(b):

(b) Whenever it is charged that any person has engaged inor is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating that charge in that respect, and contianing a notice of hering before the Board or a